

LANDMANAGEMENT Project (LMP)

Technical Co-operation between
the Kingdom of Cambodia and the Federal Republic of Germany
Ministry of Land Management, Urban Planning and Construction
(MLUC)



Deutsche Gesellschaft für
Technische Zusammenarbeit (GTZ) GmbH

Land Policy, Land Legislation and

Land Management in Cambodia

Findings and Recommendations

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Synopsis on Critical Issues and Recommendations:

<i>Critical Issues/Challenges</i>	<i>Options and Recommendations</i>
I. Land tenure systems, land policy, transformation and future socio-economic development in Cambodia	
Need for	<ul style="list-style-type: none"> – a coherent land policy – including a comprehensive legal framework
<ul style="list-style-type: none"> – Long-term, evolutionary challenges (urbanization, new functions of land) – urgent need for action, in particular, in dealing with land conflicts 	
MLUC has to develop a conclusive land policy in an uncertain environment:	
<ul style="list-style-type: none"> – no developed land markets – illegal land transfers and a deepening gap between winners and losers of privatization – no regulations on land transfer from state property – threat of increasing land shortages, land accumulation and landlessness – under-utilization of land due to mismanagement and unclear property rights 	

II. Guiding principles, objectives and instruments of a coherent and integrative land policy	
1. Land legislation is no substitute to a comprehensive land policy in the future	
<ul style="list-style-type: none"> – widening of the existing legal framework is an important, but only a first step: – only ‘legislative’ approach to react on tenure security, powerful interest groups and to get new urban/rural projects started – but: no clear objectives, strategies and priorities for land policy can be deducted from draft on Land; Forestry, Water Law etc. 	<ul style="list-style-type: none"> – to be supplemented by formulation of a national land policy (e.g. policy paper) – reformed law cannot substitute for the setting of political priorities – policy document should be backed by vision from civil society, norms on protection of property, principles of land transfer, rules, regulations for implementation
2. Requirements for national land policy	
Coherent land policy supports sustainable socio-economic development in Cambodia: (key role of land/resource tenure, separation of power land, efficiency versus equity, priority of politics over administration, attracting investors, shaping role of MLUC) ⇒ <i>confirmed at Consultative Group Meeting on Cambodia (May 2000, Paris)</i>	
2.1. Guiding principles of land policy	
<ul style="list-style-type: none"> – visions of aspired future socio-economic pathway of Cambodian society – integrating internationally binding principles (Human Rights, rule of law, equity before the law, social responsibility of private property, UNCED results) – coping with transformation process of state controlled to market economy – impact of recent Cambodian history on man-land relations (forced resettlement..) – ongoing sectoral changes 	
2.2 Objectives and Strategies	
1. Efficiency and promotion of economic development: Necessary are	<ul style="list-style-type: none"> – secured rights of ownership and possession – access to land for all private and legal persons – transparent land transfer between private persons, state and communities – enhanced efficiency of land and tenancy markets – minimized costs for land transactions (sale, leasing...) – differentiate between private law (e.g. contract law) and public law (land development of jurisdictions)

	<ul style="list-style-type: none"> – effective natural resource management – agrarian and tenure reforms where necessary – anticipation of new functions of land
2. equity and social justice	<ul style="list-style-type: none"> – realize key role of land for social & political stability – accept key role of land for future income generation – develop cheap procedures to increase tenure security – try to re-vitalize indigenous rights of communities – share responsibilities between state and communities through co-management of natural resources – protect secondary rights of vulnerable poverty groups – try to handle informal (and illegal) urban settlements – contain or solve land/resource conflicts
3. environmental protection and sustainable land use patterns	<ul style="list-style-type: none"> – discuss a comprehensive Code of Land Use – further develop participatory local land use planning – compromise between resource protection needs and conflicting objectives
2.3. Instruments of land policy	
Few but important instruments are already implemented, some are under preparation, many have still be to be developed. The following serves as an idealized framework and a check-list:	
instruments to increase certainty in law	<ul style="list-style-type: none"> – further harmonization of contradictory legal bodies – closing of existing loopholes in legislation – more information and transparency in land transfer procedures and contractual provisions
instruments of land administration	<ul style="list-style-type: none"> – working land offices at lower administrative levels – registration of rights in complementary resources – pre-emptive rights land banking – land valuation
fiscal instruments	<ul style="list-style-type: none"> – taxes on land values – taxes and fees on land transactions
institution-building instruments	<ul style="list-style-type: none"> – reform of over-centralized land agencies – integration of local governments and stakeholder
instruments for land development	<ul style="list-style-type: none"> – land consolidation and land readjustment – land use planning concepts
urban land administration instruments	<ul style="list-style-type: none"> – efficient land information systems – Guided land Development
instruments for conflict resolution	<ul style="list-style-type: none"> – out-of-court mechanisms: committees, ‘ombudsman’ – strengthening capabilities of courts

III. The contribution of the draft on Land Law (LL) to a national land policy: a critical assessment	
1. Characteristics of the new Land Law under preparation	
LL based on inherited French legal tradition <ul style="list-style-type: none"> – private and public/private state domain – difficult to understand for foreign investors and ‘average’ land owner/user – complicates local land/resource management and co-management strategies 	<ul style="list-style-type: none"> – enhance information for all those stakeholders not familiar with French legal tradition and working with Anglo-American legal thinking
amalgam of three elements: <ul style="list-style-type: none"> – attempted comprehensive, though incomplete legal framework – handbook for definition of basic legal terms 	major improvement to old Law, <u>but</u> : <ul style="list-style-type: none"> – assure primacy of Land Law over related legal bodies (e.g. Forestry) – many of them should be part of Civil Code

– substitute of a Cambodian Civil Code	or of detailed <i>Krets, Anoukrets</i> – => LL sets standards for any reformed Civil Code in future!
2. The drafted Land Law in the public debate in Cambodia	
initiated lively debate on strengths and weaknesses (NGO, donors, interest groups)	– comments are very helpful, but donors and NGOs follow as well their own policies and ‘vested interests’
3. A promising starting point for a comprehensive land and resource legislation?	
Draft on Land Law as a new starting point for land management in Cambodia: But: complementary instruments have to be developed, most of them already mentioned in the drafted Land Law:	– explicitly repeal Decree #100 (Land Law 1992) – set clear deadlines to avoid gray areas – complement other legal instruments and implement them: ⇒ rules for restoration of land from the state ⇒ selling and management of state lands ⇒ comprehensive regulations for concessions ⇒ leases of commercial and residential buildings ⇒ leasing of agricultural lands ⇒ restrictions in land use due to public interest – check consistency with existing Civil Code
Can LL serve as a coordination platform for all related land and resource issues?	– accept that property must be defined universally (all resources) (individual, state, community) and be available to all (non-)market players – property to be transferred only in conjunction with other legal bodies (contract, family law, etc., land valuation)
dilemma through actual co-existence between Land Law and Forestry Law – Land Law gives orientation for property rights for <u>all</u> land and related resources, – but important sectors, such as forestry, are excluded (Art. 9)	– give clear political signals and start initiatives to avoid that LL loses its integrative, enabling framework function – avoid sectoral thinking and support integrative approaches through incorporating all resources
Concessions, communal resource use, indigenous groups, etc. are tackled in LL, plus in other legal texts: ⇒ danger of duplication of concepts, misinterpretation and contradictions	– create common understanding about priority of LL; limit related laws to particularities of the resource under consideration (e.g. forest product management, social forestry,...) – cross-check compatibility of parallel legal texts – give MLUC the lead in coordination process ⇒ gradual re-distribution of existing power structures in administration unavoidable
4. Does the Land Law impede economic development and sector change?	
Property within public domain of the state is inalienable and not subject to prescription(Art 15) – following tradition of the ‘strong state’ – in Cambodian history: state was no good custodian of resources for ‘the people’!	– do not cement existing socio-economic structures and sectoral patterns artificially – allow for further devolution of state activities, strengthening private sector and organizations of civil society – allow for long-term leasehold or even selling of state land (to overcome budget constraints!)
no clear cut definition of private domain of the state ⇒ legal gray area	– proof if this is due to lack of assessment of existing property (management problems) or – intended to avoid public control and accountability

	in public-private land transfers
5. The central state, deconcentration and decentralization	
LL underlines role of ‘territorial public authorities’, ⇒ anticipates further deconcentration	– rules/instructions for implementation in lower level line-agencies to be developed – avoid imbalances due to different pace in preparation of necessary decrees, etc.
Art. 19: ‘true ownership of collective property’: rights for indigenous communities: => requires far reaching decentralization	– anticipate more far-sighted approaches in LL related to true decentralization – coordinate with draft of Commune Law
6. Revitalizing a restitution problem?	
Art. 5 may create a new wave of restitution claims ⇒ poisonous for legal security, rule of law and investment climate	– critical revision or clarification of Art. 5 in order to maintain trust on land issues in society
7. Expropriation in the public interest	
Art. 2 on expropriation in the public interest: much criticized in public debate, but absolutely necessary for planning, provision of infrastructure, sector change and land conversion. Consider and compromise between: – economic/legal interests of former owners and public interest – democratically legitimized ‘public interest’ – limited fiscal base of state for compensation	Measures to make it water-tight against misuse and more acceptable for civil society: – very clear definition on ‘public interest’ – clear legal procedures for expropriation – (out-of)-court mechanisms for complaints – simple, timely, cheap instruments for compensation ⇒ all require working land valuation system ⇒ MLUC gives impulses for Anoukret on expropriation and compensation ⇒ strong cooperation with other ministries

IV. Remaining challenges, shortcomings and options in developing a Cambodian land policy	
1. Integrating the registration of so-called public land into existing prices for private land	
Mismatch between reinforced attempts of MLUC for demarcation of private lands and problems of other ministries to implement a comparable system for state domain land no satisfactory division of labor between MLUC and Min. of Economy and Finance on registration of public lands ⇒ left within two responsibilities? ⇒ unified system within MLUC?	– develop clear regulations on selling, renting, mortgaging state land to private persons and legal persons – Do not work with the concept of ‘non-utilized land’ if farming systems are not well known! (fallow) – clearly delimit the boundary between private/public domain and private/public state property immediately: ⇒ to increase fiscal revenues (dry out land transactions in a black/gray market) ⇒ create credibility in the state – MLUC and other ministries to cooperate in order to ⇒ get reliable information on amount of ‘public’ land ⇒ avoid overlapping rights state/private sector ⇒ avoid silent expropriation of state through illegal transfer of land on the local level ⇒ develop decentralized monitoring from the beginning
2. Shaping the view on different land tenure systems in rural areas	
– People depend on a mix of private property plus temporary/ revoca-	– reduce the negative effects of diverging interpretation of existing rights between government, military, in-

<p>ble use rights and access options: most of them are in the public domain!</p> <ul style="list-style-type: none"> - What is artificially divided in law, is one uniform basis of subsistence for rural people - two case studies show the complexity of existing land tenure systems and severe current changes 	<p>vestors and donors</p> <ul style="list-style-type: none"> - be aware that manifold resource conflicts will come up in the near future due to this ambiguity - coordinate planning activities, in particular in rural areas to do good to these interdependencies and complementarities
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Lessons learnt from case studies:	<ul style="list-style-type: none"> - identify the spectrum of different rights for livelihood of rural people - allocate them clearly to existing tenure rules and regulations - check critically if LL respects them, if not => amendment of LL? - make sure that central state and line agencies respect the rights - try to acquire additional international funds for this long-lasting task
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practical steps for MLUC with other agencies:	<ul style="list-style-type: none"> - initiating besides registration of private rights the identification of further, 'secondary' rights of utilization - if not: long-term distortions and parallel systems will develop - enhance the political will and commitment of all agencies involved to end the ambiguous tenure status
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sources of information on property rights systems:	<ul style="list-style-type: none"> - written date of Dep. of Cadastre & Geography of MLUC - background information of MLUC staff working in the villages - background information from other line ministries - reports of projects of international development cooperation - reasons of existing resource conflicts => NGOs - long-term empirical research of CDRI, Legal Aid, OXFAM, UN, etc.
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3. Concessions, (foreign) investment and land concentration

<p>limited focus on private land registration has supported 'wild' proliferation of agricultural/forest concessions on public land.</p> <p>⇒ evaluate positive and negative effects of concessions:</p>	<p>expected positive effects:</p> <ul style="list-style-type: none"> - element of agricultural development strategy - fiscal revenues - foreign currency income - some rural employment (laborers no farmers!) <p>expected negative effects:</p> <ul style="list-style-type: none"> - redistribution of land => socio-economic differentiation - loss of complementary income for rural population (closing of forests) - => resource basis is shrinking without compensation - alarming land concentration and landlessness
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<p>Example from Kampot Province:</p> <ul style="list-style-type: none"> ⇒ an estimated 95.000 ha foreseen for concessions ⇒ new open land conflicts expected ⇒ far-reaching external intervention into existing agrarian structure 	<p>take into consideration the consequences for rural population:</p> <ul style="list-style-type: none"> - expulsion from cultivated land, later work as laborers - expropriation of use rights => no compensation - changes in agriculture: from food to cash crops - no perspectives how to intensify food production remaining land (sufficient technical progress?) - protest, social unrest, demonstration in Phnom Penh
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<p>Allocation of concession without clear legal framework</p> <p>⇒ severe long-term land use conflicts to be expected</p>	<p>Urgent need to develop concepts on legal basis for concessions and impact assessment:</p> <ul style="list-style-type: none"> - allocation of new concessions leads to illegal influx of new settlers expecting legalization of their occupancy - discuss if only legal titles of old settlers are acknowl-
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	<ul style="list-style-type: none"> – edged by the state to avoid social unrest – get more information about number of people being concerned of expulsion – local administration: victim of existing legal vacuum or its cause? (illegal allocation of concessions) – improve information about number and terms of concessions allocated by the central state – improve ill-balanced contracts with concessionaires (duration, management plans for local users, etc.)
4. Inter-ministerial coordination and cooperation	
Too many line ministries and agencies are involved in tenure aspects of land and related resources:	<p>within existing structures: improve level and intensity of mutual consultation in order to</p> <ul style="list-style-type: none"> – avoid overlapping and duplication – make registration of private <u>and</u> state land transparent and accountable – overcome coordination problems on the local level on boundaries of influence spheres of ministries – intensify complementarities between land and water tenure for intensified agriculture
different steps for harmonization are necessary:	<ul style="list-style-type: none"> – harmonization of technical terms, concepts and definitions – identification of cost-effective procedures for delimitation and registration of different resources – develop common mechanisms for conflict resolution, together with NGOs and other organizations of civil society
It should be one principal task of MLUC's activities to guide the coordination process:	<ul style="list-style-type: none"> – MLUC responsible for LL as the focus for all land and related matters – MLUC has a non-restricted cross-sectoral mandate – MLUC has a strong dynamic component: land development and securing new functions of land – MLUC is entitled to further develop land administration (register) and may extent this to public land and other resources – MLUC is a relatively 'young' ministry where structures are not yet that rigid as in old-established ministries – MLUC has already established good working relations with local governments <p>but: consider old established structures in MLUC at lower levels as well (old land offices on the provincial levels)</p> <p>⇒ self-critical assessment of existing organizational structures</p> <ul style="list-style-type: none"> – coordination as a chance to overcome parallel systems of land management once for all
5. Conflict resolution and conflict prevention	
<p>Many kinds of land conflicts are reported by NGOs. Involved - besides villagers- are mainly:</p> <ul style="list-style-type: none"> – military commanders and soldiers – local government officials – politically influential people – village representatives – neighboring families <p>Besides 'minor' conflicts new dimensions with a regional impact appear:</p>	<p>Solutions and mutually acceptable procedures for reconciliation often are developed with help of NGOs acting as mediators:</p> <ul style="list-style-type: none"> ⇒ do not impose on current good work of NGOs as the central state or local government ⇒ develop further the legal recognition of out-of-court solutions where possible ⇒ allow for public discussion of cases to create trust and credibility of the local population in civil society
<p>At the interface private - state land:</p> <ul style="list-style-type: none"> ⇒ local population and military ⇒ expropriation of land by influential persons for concessions 	<ul style="list-style-type: none"> – Be aware the crucial importance of a coherent legal and regulatory framework at all regional levels to solve problems of private-public resource transfer – make conflicts more public and transparent in order

⇒ private owners and state about expropriation in public interest	to avoid information asymmetries in favor of influential power groups
Conflicts within the private sector: ⇒ twofold selling of lands ⇒ rights on temporary flooded land	– develop land registers on a country wide scale as soon as possible – harmonize LL and Fishery Law
Conflicts within the state domain: ⇒ new use patterns for land formerly regarded as village land ⇒ between line ministries about different categories of public land	– again: develop clear regulations on conditions of expropriation in the public interest – develop mechanisms for compensation (perhaps together with favorable credit schemes) – assign clear ministerial responsibilities
Additional procedures are necessary in order to better coordinate cooperation between ministries, often they themselves are the source of conflicts	Future role of MLUC: – present clear-cut, transparent criteria for delimiting zones of differing interests – act as an information pool and clearing center – develop documentation and information systems – monitor the interests of all stakeholders involved – consulting neighboring line ministries – harmonize or even unify existing registers on resources – contribute significantly to the work of existing committees for conflict resolution

V. Land management and land development strategies for the future	
1. Clarification of technical terms	
Before starting strategies to improve land development a broad discussion of experts on basic technical terms is urgently needed! This clarification cannot be separated from an identification of training needs	– get a clear understanding of ‘land management’ – does the ‘master plan’ concept still coincide with recent concepts of land administration and development – contribute in the discussion from international expertise of neighboring countries – identify participation interest of civil society in planning – clarify the role of land use planning: bottom up elements versus hierarchical planning
2. Priorities to establish additional instruments for land management and land development	
Considerable progress in establishment of land administration! New tasks to be done with priority:	
Finalize a decentralized land register	– external financial support secured for next phase, but – additional funds from international donors needed to speed up the process
Harmonize the registration of private and public land	– increase awareness building at international donors – make a decision about unified register – allocate clear responsibilities between ministries – assess if not MLUC should be responsible for all domains
Proceed in developing a workable system of land valuation to allow for – compensation payment – land market development – conflict reduction – reduced transaction costs – increased land tax revenue	– find a country-appropriate between needs for accuracy (e.g. soil quality) and imputed direct and indirect social costs – as land valuation is at an infant stage, => ample choice for the most appropriate solution for Cambodia – cooperate strongly with those donor agencies which are experiences in land valuation systems in neighboring countries
start to develop concepts on	– facilitating public investment, urban planning and land con-

land banking	version – reservation of land for specific target groups (rural poor, illegal urban settlers)
rationalize the system of land taxation	– new chance that land tax better reflects land values – charge flexible royalties which do better reflect the value of concessions
Many gaps and loopholes to be filled to make land development instruments work: There is a strong need to	
discuss Agrarian Structure Development Planning	– complementary to rural regional development, village development – important in regions with quick structural change (cities)
identify areas for land consolidation and re-adjustment	– future role in intensive, irrigated agricultural systems – resettlement of informal urban settlers
develop concepts on land use planning	– make a decision on the degree of local participation and in – leading agencies
check fields of implementation for urban land readjustment	– assess the experiences in other Asian countries and its positive impact on overall economic development – be aware that it changes present land distribution structure – create public-private partnership in urban areas (for implementation) – but: check as well if is acceptable to local population after recent legal insecurity on land and fear for expropriation
develop innovative strategies to cope with illegal urban squatting	– current approach of forced resettlement not very promising with regard to experiences in other countries – looking for peaceful solutions: – linking rehabilitation and legalizing programmes – support self-help activities for basic technical infrastructure – but: no blue-print solution possible: but more discussion and fact finding necessary: hierarchical planning versus participation?
3. the role of planning at different administrative and regional levels	
Need to rethink the existing responsibilities and task on the different administrative levels	– cross-country experiences have shown that for implementation of instruments more participatory approaches are appropriate. => look for Cambodian solutions
Strong need on national level to build a framework to harmonize different donor approaches on the local level	– avoid a patchwork of different land use and village development models – identify a leading agency, like MLUC, to set clear milestones for donor initiatives – do it in a consultative way together with donor agencies already involved – coordinate the work between line ministries
4. Training requirements	
Need to continue with high priority in supporting training activities on all professional and regional levels	– Build upon the very positive results in MLUC on computer training and modern techniques for land registration – check additional training needs to start with the implementation of additional instruments for land management – identify what kind of training is possible with local trainers and which one requires international cooperation – try to attract additional donor funding for this important task
5. Mechanisms for conflict resolution in land management and land development strategies	

<p>Realize that the implementation of new land management instruments is not a harmonious process. Smoldering conflicts will come to the surface</p>	<p>Further develop some basic mechanisms for conflict resolution or conflict containment:</p> <ul style="list-style-type: none"> – although out-of-court solutions are important the primacy of the court system should not be attenuated too much – step-wise approach is necessary where both systems fulfill complementary functions – helps to increase the confidence of the ‘ordinary people’ in the law after long periods of lawlessness – make use of the rich experiences of NGOs and UN organizations on resource conflicts and solutions in Cambodia
<p>sometimes science and development cooperation is overoptimistic on autochthonous rights collective action</p>	<ul style="list-style-type: none"> – get more information if indigenous rules and regulations apply in the villages after long periods of social disruption – identify positive examples of social cohesion and <u>voluntary</u> collective on the local level – check very carefully if the basis for cooperative resource management is given

List of abbreviations:

Art.	Article
CDRI	Cambodia Development Research Institute
CORCHR	Cambodia Office of the United Nations High Commissioner for Human Rights
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit GmbH
H.E.	His Excellency
LL	Land Law (Draft 1999)
LMP	Landmanagement Project (GTZ)
LTD	Land Titles Department
MLUC	Ministry
NGO	Non-Governmental Organization
PRA	Participatory Rural Appraisal
RGC	Royal Government of Cambodia
UNDP	United Nations Development Programme
WFP	World Food Programme

I Land tenure systems, land policy, transformation and future socio-economic development in Cambodia

The **transformation** of Cambodia from a centrally planned economy to a **market - based economic system**, the abolition of collective agriculture and a restoration of family farming, the emergence of product and factor markets including land and credit markets in urban and rural areas, a stronger integration into the world economy and intensified development cooperation, all of them present **new challenges for the future development of land tenure systems**. This development has to be founded on a **coherent land policy** with a comprehensive **legal framework** at its core and needs to be embedded into broader concepts for economic and social change. Also, such a policy should be formulated and implemented, at least in part, by the Ministry of Land Management, Urban Planning and Construction (MLUC).

Some of the emerging challenges are of a **long-term, evolutionary kind** (urbanization, new functions of land), **others need urgent action** (open land conflicts); some have a direct or indirect impact on all landowners and land users (e.g. the urgent need for clearly defined, secured and uncontested rights of ownership or possession), others are **restricted to specific, marginalized and vulnerable groups** (female-headed households, indigenous peoples). Some of them refer to intensively used agricultural land (land tenure systems in irrigated areas) or urban plots with clear-cut boundaries, others are the result of private **encroachment** upon communal lands and/or natural resources (forest and fishery concessions). In the last case, a broader concept for 'land tenure' in the sense of '**resource tenure**' is required to cope with the manifold competing claims, because complementary resources such as water, forests, grazing land or fishery are concerned.

In the years to come a **conclusive land policy** has to be developed and the **MLUC** has to operate in an environment that is characterized by, at least, the following **severe tenure-related shortcomings and pressing problems** at the national level:

- After ten years of transformation, **land markets** are not yet sufficiently developed and, as an institution, do not work efficiently. **Illegal land transfers** (land grabbing) are the rule, as case studies show, leading not only to state revenue forgone (land transfer tax, registration fees) but also to plots being overpriced due to the forced payment of risk premiums. Even more critical, they also **undermine legal security**, lead to smoldering and open **land conflicts** and deepen the **gap in Cambodian society** between **winners** and **losers** of the privatization process. The overall economic and **social costs** are high, and only a land administration which for its conceptual and implementation work has the backing of other ministries and important actors in the **emerging civil society**, meaning in the private sector and from NGOs, can contribute to reducing them significantly!
- In particular, the **transfer of land** from former **public or state property** of the socialist era to private property (either as property of natural or of legal persons) is dif-

difficult to monitor at present, giving leeway to all kinds of **appropriation strategies**, to corruption etc. These transactions are often performed out of reach of any **public control**. Complaints about the encroachment of private claims upon communal land, about existing but unrecorded and not yet legally accepted secondary rights to private lands, such as rights of way or water offtake, inconsistent inheritance regulations, etc. are but a few examples. Here, **new coalitions** are needed to bring the already existent **paper mandate** of MLUC closer to reality.

- The threat of **increasing land shortages** and **landlessness** due to **land accumulation** and concentration in the hands of a small elite combined with the scarce job opportunities outside of agriculture has to be faced soon. Otherwise it could soon reach critical proportions in both, urban or rural development centers. It will lead not only to **rural poverty** in general but also to the **marginalization** of vulnerable groups, such as returning refugees, female-headed households, ethnic minorities and all those still depending on common property for income generation. Alarming change in land distribution cannot be ignored anymore, it increases the danger of social unrest and political instability.
- In any **rice producing society** a functioning **irrigation system** constitutes the backbone for future food security, income generation in rural areas and sustainable intensive agriculture. Complaints about its under-utilization, mismanagement and diminishing productivity are manifold. Often the problem is strongly linked to **insecure land tenure arrangements**, to **unclear property rights** in dams, water reservoirs and canals resulting in a **lack of maintenance** and few incentives for water user groups (e.g. public private partnership). Here, innovative ideas have to be developed in the short term on how to reorganize irrigation schemes such as to improve efficiency, equity and environmental protection while combining private, individual rights to land with communal rights to water or machinery and with user associations.

A clear outline of the emerging and unresolved land/resource tenure problems reveals that the **work of MLUC** cannot be the only panacea. While, as will be shown, it may very well contribute directly to creating greater legal security, to a wider application of the rule of law to conflict resolution processes and to providing **investors** with a longer planning horizon in some cases; in others it may only be able to influence economic, agricultural or regional policies indirectly or to contribute to the further elaboration of a **coherent legal framework**. In still other cases these initiatives may start or intensify a discussion process between different interest groups of civil society which, if all goes well, can in turn lead to more **transparency and accountability** in land and resource tenure issues.

II. Guiding principles, objectives and instruments of a coherent and integrative land policy

1 Land legislation is no substitute to a comprehensive land policy in the future

From a socio-economic perspective the Royal Government of Cambodia (RGC) is actually setting some cornerstones for and shaping the **vision of its land policy**. This is mainly done implicitly, namely through the **reform** and the **widening of the existing legal framework**. It is much less the result of the formulation of clear-cut **guiding principles** and land policy positions having come about through internal discussion and consultation processes within an emerging civil society. Thus two question arises: can the current attempts to reform the existing and create a broader legal and regulatory framework on land tenure and land management be a substitute for the formulation of a cohesive, rational and comprehensive land policy for Cambodia? What could be future policy orientations for politicians, the different interest groups and donors?

The **visions**, the **objectives**, the **strategies**, the **prioritization** and the **instruments** of land policy can only be deduced by condensing major issues being tackled in the recent legal texts and the relevance given to them in the **legal documents**. These include the

- drafted new *Land Law*¹ and the
- Sub Decree on the *Procedure of Establishing Cadastral Index Map and Land Register* (signed on 22nd March 2000 by H.E. the Prime Minister)

They have to be **supplemented** by other legal texts closely related to land tenure, land use and land management, such as the

- drafted *Forestry Law* (draft II from November 3, 1999), the
- Anoukret on Forest Management Concessions (from February 3, 2000)
- drafted Sub-Decree on Forestry Communal Land
- drafted *Fishery Conservation, Management and Development Law* (from August 1999) or
- a *Water Law* under preparation.

The political priorities RGC has set to solve the current land tenure problems are **reflected only in a limited way** by

- the **mentioning** or even the **omission** of challenging issues which have to be tackled and regulated by the laws and decrees under preparation (for example, on expropriation for public purpose, on agricultural concessions) and

¹ In the English translation of the French version from December 2, 1999, the drafted Land Law is referred to as "Real Estate Bill". In the following this report operates with the term "Land Law".

- the **relative importance** and detailed treatment of accorded to other tenure-relevant aspects (such as the definition of the public and private state domain, the manifold restrictions on a temporary or even permanent transfer of land from these domains to the private sector).

Although it will be by no means sufficient to rely on legal instruments as a **substitute** for future development, the rationale of the **Cambodian ‘legislative’ approach** has followed its own logic: it tried to react in due time to the massive increase in the number of dubious land transactions since 1989, land transactions which are based on insecure rights of possession and take place in a **gray area** (van Acker 1999). It further tried to take into account the **demand for land made by different interest groups**, some of which are in a strong position to put **pressure** on the government (such as private sector investors, international donors, NGOs or the military). At the same time to proceed in such a way has aided the government in starting the **implementation** of some rural and urban **pilot projects** in a trial-and-error process before the time-consuming dialogue and consultation process within an emerging civil society about the basic requirements of a future land policy was set in motion.

Until now, no document which could be called a **land policy paper**, has been explicitly developed. The major elements of such a national land policy (policy on land rights and land use) would need to elaborate on issues such as

- **basic norms** on the protection of (landed) property,
- basic **principles on transfer of land**, based on private contracts and regulated in civil law,
- a **policy vision**, formulated by the government, in part being approved by the National Assembly as the guiding principles of a national land policy,
- laws, decrees and other legal and procedural texts to **implement** the relevant land policy and
- a **critical evaluation** of applicable policy instruments for a future land policy.

2. Requirements for a national land policy

The **formulation of a coherent integrated land policy** is urgently required to support sustainable socio-economic development for the following reasons:

- to underline the key role of land tenure in a society which, in the future too, to a large extent will **depend** on the **use of land and complementary resources** for income generation, employment, foreign currency, social security etc. due to a lack of off-farm income sources;
- to make very clear from the beginning the **separation of power** between the execu-

tive bodies (central and local administration), the legislative and the judiciary systems with regard to the crucial issue of land;

- to give at the same time **priority** to political decision making over administrative routines in the formulation of land management strategies. Both aspects will be of major importance for effective mechanisms of conflict resolution in the future.
- to give the **administration, the private sector, the NGOs** and the international donors a clear understanding of the **key role** the new **Ministry of Land, Urban Planning and Construction** will play for land and resource development in the future;
- to underline the strong will of the RGC to continue with a policy which tries to **balance efficiency with equity objectives** and social justice with regard to access to and ownership of land, particularly in order to protect, the interests of millions of peasants and to continue with poverty alleviation,
- to give **local and foreign investors** long-term and secure planning horizons for private investments in urban, peri-urban and rural areas and
- to better identify **existing constraints and inconsistencies** within and between the existing legal and regulatory framework with regard to land.

Many of the concerns and requirements have been expressed in the recent Consultative Group Meeting on Cambodia in Paris on May 25, 2000: "Delegates also insisted on the necessity and urgency of tackling land issues in a transparent and equitable way since this also has a great impact on the poor. Delegates expressed concern about the continuing proliferation of land disputes and allegations of land grabbing. Transparent and participatory land and natural resources management were key elements of good governance. While acknowledging the government's announcement that the new Land Law would be enacted before the end of June 2000 delegates recognized that much more needs to be done to ensure that actual enforcement of the laws was carried out effectively. The government invited donors interested in assisting with land management, mapping, and registration to a round-table discussion to be convened later this year in Cambodia to the agenda forward"

2.1 Guiding Principles

What is missing, therefore, is the formulation and acceptance of a coherent, conclusive and transparent land policy based on a rather **broad internal discussion process** - first within the government and secondly with **relevant groups of civil society**. What could possibly be guiding principles of a long-term national land policy?

Such guiding principles should reflect

- visions regarding an **aspired pathway of future socio-economic development** (e.g. maximum tolerable degree in inequality in land ownership, support to vulnerable groups);
- **internationally and nationally binding guiding principles** based on the Charter of Human Rights and the Constitution (equality before the law, rule of law, legal secu-

rity, separation of powers, protection of ethnic minorities, social responsibility of private property, etc.) as well of the Rio/UNCED-process (protection of natural resources and of biodiversity);

- the process of **transformation from a socialist control-and-command state to a self-responsible, decentralized organization of society** in a market economy (re-thinking the role of the state in land issues);
- the **recent Cambodian history** with its severe repercussion on the societal structure and man-land relations (forced resettlement, restitution of land);
- the ongoing **sectoral change** in economic activities from agriculture and rural based activities to more urban based industrial and service sectors and
- the fact that social and economic **security** is based on land for both, the majority of the Cambodian population as well as for the investment interests of the private sector and for environmental needs.

2.2 *Objectives and Strategies*

At a minimum three main superordinate objectives are necessary for a comprehensive land policy (see, for example, GTZ 1998):

- 1 **efficiency** and the promotion of economic development,
- 2 **equity** and social justice,
- 3 **environmental protection** and sustainable pattern of land use.

In its fact finding mission from February 2000, the *World Bank* formulates it as follows: "...to work towards a policy framework that could guide the formulation of a long term program of land management and land administration whose implementation would lead towards an equitable, efficient use of land and the related natural resources (forest, wild life and water)" (World Bank 2000).

In order to reach the *efficiency objective*, the following aspects have to be thoroughly considered: **agrarian and land tenure reforms**, an **effective natural resource management** at different regional levels, developing social security systems based on access to natural resources, and the setting of frame conditions for sustainable rural development can only be brought to a successful end if a uniform legal and regulatory framework has been developed by the state which provides equal access to and use of resources for **all private and legal persons**, as well as to village communities, user associations, former collectives and the state. The drafted Land Law and the Decrees on Registration and on the Mission of MLUC are important steps in this direction.

Furthermore, in order to enhance efficiency in land affairs a precise **differentiation between private contract law as part of civil law and public law** should be made together with clearly defined regulations for responsibility and **enforceable liability** of private and public actors. This is necessary in order

- to give **secure rights of ownership** (through registration and land titles) and possession (all forms of tenancy) in land,
- to allow for the simple and transparent **transfer of rights between private persons, the state and communities** in both directions (from the state to private actors, meaning privatization and vice versa meaning nationalization) in case of documented public interest,
- to improve the efficiency of **land and tenancy markets**,
- to provide for clear **succession regulations** and
- to **minimize the costs** for the preparation of sale, tenancy or land use contracts, their negotiation, their fixing, their monitoring and enforcement (so called private and public **transaction costs**).

In Cambodia, civil law and land law do not really fit easily into the roles assigned to such law else where: to create an enabling environment for land management and land development. Nor does Cambodians public law pertaining to land and related resources, such as forests, fishery, water etc. In particular, neither public law nor government policy do support sufficiently any efficiency enhancing **sectoral change** (multiple employment, small-scale industry, etc.) commonly furthered **through land policies** and the **anticipation of new functions** of land in society (environmental protection). Legal and institutional structures e.g. for land banking or land use planning including expropriation with adequate compensation are as much part of the efficiency objective as they represent a secured cost-recovery mechanism for enlarged public investment

The overall objective to contribute to *equity* through land policies and to **promote social and political stability** involves presupposes adequate mechanisms to deal with smoldering or emerging **conflicts** between rural and urban interests, between "modern" and "traditional" norms and law, wealthy and poor segments of the population. Important aspects are the recognition of the importance of land and related resources as the basis for employment and income particularly in rural areas as well as its relevance for future social security systems (old age, illness). As the Cambodian society still overwhelmingly depends on livelihoods and **income generation from land**, land policy has to offer **cheap procedures** to increase people's tenure security for permanent transfer of land (titling) and temporary transfer (renting, use rights). As the *World Bank Country Assistance Strategy* (2000) clearly states, the lack of access to land is a major contributing factor to rural poverty and limited income-earning potentials (World Bank 2000:5f).

A far sighted land policy has to recognize or to **re-vitalize autochthonous communal rights of village communities** and to define the future role of local land tenure authorities in the course of devolution of state influence in civil society. A clear position regarding *Community Based Natural Resource Management* or *Co-Management*, involving shared responsibilities of the state and local authorities, is required in order to provide a clear policy framework to the manifold attempts of international donors to create

such structures within "their" projects and programmes. As we will see later on, no easy solutions can be expected in a society where voluntary cooperation has been continuously undermined and eroded through the control and command system and the terror of the last decades.

Secondary rights of vulnerable poverty groups (e.g. rights of collection of forest products for female headed households), the rights of indigenous groups or ethnic minorities and gender equity before the law need to be considered when facing alarming growth rates of landlessness in the country and a worsening of the land distribution. Even special promotional programs for disadvantaged groups, such as women and the landless, may be an element of an active land policy. The same is true for approaches to **handle informal (and illegal) urban settlements** in the future, something which nowhere and never has been solved simply by police power or sending illegal settlers back to their places of origin .

Although efficiency and equity objectives may be conflicting in many terms, mechanisms to reduce, to **contain or to solve conflicts** are of crucial importance to achieve both efficiency and social stability in the future.

Land policy is increasingly expected to contribute to *environmental policy*. It can set basic preconditions for maintaining the natural production potential and for prompting **sustainable land use**: a comprehensive **Code on Land Use** would make sense but until now has rarely been realized anywhere; land use planning and the declaration of protected areas ask for far reaching coordination and cooperation mechanisms between powerful line ministries and interest groups involved. Equity and environmental objectives work in the same direction with regard to the elaboration of participatory, environmentally sustainable local land use concepts for communal resources.

2.3 *Instruments*

Tenure security, land markets and markets for tenancy rights do not develop by themselves, their establishment and improvement is tied to the sensible use of a wide range of functioning *land policy instruments* (GTZ 1998), many of them applicable to Cambodia:

Instruments capable of increasing certainty in law: Inconsistent and even contradictory pieces of legislation on land tenure need **harmonization** as many overlapping and even contradictory laws, decrees, regulations and orders still obtain in Cambodia. Existing **loopholes** have to be closed, easier access to **information** on land and **transparency** especially in land transfer procedures and contractual provisions should be provided for.

Instruments of land administration: **Land offices and cadastre systems** are urgently needed in densely populated areas, where land markets become active and social structures are in the process of differentiating. These instruments are, however, by no means enough to ensure sustainable urban and rural development. Their **benefits** are well known; the **risks and problems** attached to them are often ignored: voluntary registra-

tion reaches only a small part of the population, compulsory registration is expensive from an individual and macro-economic point of view. In other cases, voluntary registration will never be sufficient to reach development objectives on the village, regional or national level, thus, some compulsory measure may become necessary. Voluntary registration is often biased toward men; the maintenance costs of the system are high; registration will not result in higher output if the technology, human capital or support institutions are not available as **complementary resources**. The question here is how to combine formal with informal, less expensive systems in the future.

As land fulfills several other important functions beside its economic value, in particular in Cambodia, **land markets** are to some degree subject to **government control interests**. The same is true for tenancy markets and **lease regulations**. Regulations, in general, such as a **land transaction act** or **pre-emptive rights** may be helpful to ensure that, for example, agricultural land remains in the hands of peasants and is not purchased by urban based, absentee landlords for speculation. Activities to enhance the efficiency, transparency and social functions of land markets include: clarifying the private and public sector's role, evaluating and auditing existing land market institutions, capacity building and training of personnel dealing with reformed land markets, clearly defining the taxation base and enforcing taxes on land transfers

The role of **land banking** for steering land markets and for protected areas has been neglected so far. Its objective is to make land available for specific target groups and purposes, such as land development in municipalities or the indicative control of land prices. It can be developed as an instrument to facilitate the future provision of land for specific agricultural purposes, for transportation, recreational or environmental purposes and for exchange in case of expropriation in the public interest.

Transparent land markets, compensation for expropriation, land taxation or mortgaging require **land valuation** to determine the actual economic value of landed property. It accounts for the existing property regime, location, development prospects, encumbrances and specific risks.

Fiscal instruments: these include **land taxation, taxes on land values, taxes and fees on land transactions**. Land tax can be an important source of income for municipal and local authorities. It can help to accomplish decentralization, community development and tax reforms. Besides its direct (but limited) fiscal impact, it can be used as a (dis-)incentive, to provide land for different purposes (construction, industry) or to curb land speculation.

Institution-building instruments: Both in urban and rural areas, at national, regional and local level and in traditional and modern land tenure, existing institutions and regulations are often an obstacle to finding more efficient and equitable alternatives. The reform of centralized land agencies and the clear-cut assignment of responsibilities among institutions are crucial for the successful implementation of any new land policy. This reform must incorporate models to integrate local governments and stakeholders, to institute a multi-strand public-private partnership and improve quality assurance and performance control, including enhanced accountability, systems for improved infor-

mation exchange and networking.

Instruments for land development: A set of instruments, used either alone or in combination, have been tried and tested to support the development of land tenure, in particular in rural areas and agrarian structures: **Land consolidation and land readjustment** is the most comprehensive of all instruments and is used to eliminate structural deficiencies in existing land ownership relations and match land use patterns with land tenure systems. It is also important for irrigation and settlement programmes, establishing smallholder plantations or nature conservation projects. **Land use planning** is based on the idea that development is a ‘bottom-up’ process involving self-help, responsibility and interdisciplinarity under clearly defined frame conditions which have to be set up, often in a top down way, by the central state. Village land use plans are implemented primarily by local target groups often supported by development agencies. Any implementation of land use planning affects the tenure rights of individuals and communities. Regional or national land use planning has, of course, to consider by far more interests and influencing factors when being developed and implemented. Often, differing interests can only be reconciled by consensus and the acceptance of local rules or by applying measures like land readjustment with, for example, a voluntary exchange of parcels which, in turn, has to be based on transparent legal mechanisms.

Urban land administration instruments: there is often a lack of clear information on land tenure in urban areas. Land information systems are a precondition for efficient urban planning and urban development. One concept for urban and suburban development is **Guided Land Development**, where state departments responsible for infrastructure such as roads, utilities and sewage make these available before private urban development begins.

Instruments for conflict resolution: All **formal** and **informal forms** of land conflict resolution have to be strengthened in order to achieve equity and equality also in line with traditional rules. Many disputes are directly attributable to the exclusion of local users and communities and the ignorance of autochthonous institutions. The economic benefits of averted or resolved resource conflicts are difficult to estimate but the benefits are enormous for investment incentives, planning security, social peace and political stability.

Committees for conflict resolution or an ombudsman (a mediator) can act as recognized arbitrators for settling disputes primarily at the important **local level**. To **acknowledge autochthonous instruments for conflict arbitration** in national law and bridge the gap between the two legal spheres is a challenge for the future. Attempts, often supported by development agencies and NGOs, to codify customary law are well-meant, but they can culminate in rigid conventions at the expense of the adaptability typical to indigenous law.

Government initiative, development cooperation and local self-help are continuously **creating new corporations** for conflict resolution or **reactivating** existing ones. To enhance their authority and credibility, land disputes should be kept separate from the executive level and more **out-of-court forms of reconciliation** should be supported.

The working tenet of these out-of-court solutions is **‘settling above judging’**. They include round-table conferences with different actors and interest groups involved. This, in turn, does not mean that the courts as a last instance and the third pillar of a democratically legitimized market economy are taken apart or being ignored!

III. The contribution of the drafted Land Law to a national land policy: a critical assessment

1. Characteristics of the new Land Law under preparation

The new Land Law which was presented in a drafted form in December 1999 has to consider the major stipulations of the **Constitution of Cambodia** as amended on March 4, 1999, in particular art. 58 to 60. Article clearly defines what is State property while Art. 59 **underlines the role of the State** in the protection of the environment. Art. 60 defines the freedom of trade and economic transactions of the Cambodian citizens and limits the interference of the state into private contracting.

The Land Law is taking up and continuing, to a good part, the deeply rooted **French legal tradition** in Cambodia which was cut off by the political upheavals in the 1970s. This **heritage of legal thinking** becomes particularly evident in the definition and classification of different property rights systems or - to define it in another way - different land tenure regimes for the country (Art. 12ff.). It differentiates between a **private and a state domain** (*domaine privé* and *domaine publique*), which again is **sub-divided** into a **public domain**, resp. private property, (*domaine publique d'Etat*) and a **private domain** (or private property) **of public entities** (*domaine privé d'Etat*).

For **foreign private and public investors**, for development agencies and, above all, for the **average land owner or land user** performing temporary or permanent land transactions this sophisticated classification system of the public domain will not be easily understandable and workable with. It **increases private investment costs** due to the necessary harmonization of standard contracts which are already applicable in neighboring countries but do not easily fit to Cambodia. It makes it more costly to get the relevant information of the status of land from the (not yet well developed) land registers, to negotiate with several private and public partners and to settle new kinds of land conflicts due to a lack or distorted information on the characteristics of a plot (so called information asymmetry).

This will become evident in the coming years when regulations and institutions for **local land and resource management systems** have to be elaborated and implemented in rural regions. Here, private land rights in permanent, intensively used resources will have to be coordinated with (temporary) use rights and access options of the state domain, either of public or private state lands. Only then can efficient **co-management strategies between local users and government agencies** be developed, which may give smallholders, the landless or female headed households, a more secure income basis and can protect the natural environment which Cambodia is so dependent upon (see as well II, 2.3).

From a non-legal, **socio-economic focus** the drafted Land Law appears to be an amalgam of three basic elements:

- An **attempted comprehensive, though incomplete legal framework** aiming to define and to structure the manifold existing man-land relations, taking into account not

only land for agricultural or industrial use but as well linking them to forest and water utilization. It covers or, at least, touches all important land use categories and property rights in land, ranging from agricultural and forest concessions, communal management of forests, flooded areas, protected areas through to industrial and urban use. Compared to the existing legal and regulatory framework (Land Law from 1992) the new Law with its **integrative approach** represents, at a first glance, a **major step ahead** for Cambodia. Nevertheless, many important questions are still left open as to the primacy of the Land Law over complementary legal bodies, like the Forestry and Fishery Law in a all-encompassing legal framework (see below).

- A **handbook of definitions** of basic legal terms, which often goes beyond the requirements of a Land Law, e.g. when analyzing the definition on indigenous communities *Art. 6*), the different liabilities in case of damage (*Art. 103f.*) or the many detailed regulations for ownership in division (*Chapter IX*),. Some of them should better be part of a more general Civil Law or even the Constitution: the role of indigenous communities in society influences upon much more than their resource rights. Others should be regulated in a more detailed *Kret* (Decree) or *Anoukret* (Sub-Decree) as they do not seem to be general enough to be part of a law which sets a frame for a wide range of transactions and for the detail of local implementation.
- many chapters the Land Law tries to **substitute a Cambodian Civil Code** in which the general regulations on economic contracts, such as selling, lending, pledging or rules on succession should be regulated for all economic goods which can be transferred permanently or temporarily and not exclusively for land. As legal experts confirm that the existing Civil Code does not fulfill the requirements of a modern market economy with regard to contract law, the drafted Land Law now sets standards for any revised Civil Code if the country wants to pursue a coherent and consistent legislation in future.

In summing up, the drafted Land Law is **very ambitious** in trying to substitute important chapters of a Civil Code on the one hand; it tries to regulate too many aspects in a very detailed way but , on the other hand, it creates parallel legal worlds in particular with regard to the management of forests and fishery resources.

2. The drafted Land Law in the public debate in Cambodia

The different drafts of the Land Law have circulated within and between the organizations of civil society, in particular the NGOs and international donor organizations, and have **initiated a lively discussion** about its strengths and weaknesses from their point of view². In summing up this discussion the NGO sector formulated guidelines and checked the draft against these cornerstones.

Taking these guidelines together with the existing guiding principles for comparable

² See as the latest product: Williams, S. (ed.) (2000), Submission. Immovable Property. Drafted by NGO/IO Land Law Working Group, Phnom Penh.

countries as a benchmark for a critical assessment, the NGO report summarizes some major shortcoming, inconsistencies and loopholes of the drafted Law thereby strongly weakening its potential as a key component of the long-term land policy. However, neither the government's nor this NGO position can be the final one as both incorporate **hidden value judgments or vested interests** of a pressure group. Both can profit from additional critical comments, with only some incomplete ones given in this report.

In an introductory statement NGO representatives see the objective of a land law in the creation and regulation of an efficient and equitable land market which in turn will increase sustainable production and strengthen social cohesion. They feel it is this objective against which the revised draft land law should be tested. From an economic perspective in a transition economy like Cambodia the development of land markets cannot be the only objective of a land law. Here, non-market mechanisms (land allocation mechanisms within the family) will prevail for long time into future. Nor can land markets, once established, by themselves harmonize the often conflicting goals of efficiency and equity.

Shouldn't it be the objective of a land law to contribute significantly to a coherent and transparent land policy in which land markets play an important role but not, of course, the only one? If land markets are used in the NGO paper as a proxy or a paraphrasing of land policy the misunderstanding can easily be cleared up, if one broadens the objectives of land policy to some degree.

The NGO submission lists a number of guiding principles to which a new Land Law should apply. These are fully in line with the general statements made in Chapter II of this report and refer in particular to:

- compliance with the relevant parts of the Constitution, clear mandates of rights and liabilities, a clear delegation of authority for the consecutive implementation;
- transparency, accountability, internal consistency and consistency with other legal bodies, public participation;
- meeting the international obligations of Cambodia;
- the need to reflect the special problems of the country in dealing with the current legislation, in particular in dealing with titling, secure land rights for both, state and private persons;
- protection of state property for public benefit from illegal expropriation (by different pressure groups);
- providing transparent, equitable, accessible mechanisms for transferring state property into the private domain and creating a legislative framework for secure transactions within the private domain (e.g. sale, tenancy contracts),
- making government officials responsible and accountable for dealing with land titles and land rights,
- providing a clear positioning on land concessions in the legal context;
- recognizing the special situation of ethnic minorities and their rights to land and re-

lated resources and to

- eliminate gender biases in existing legislation.

3. A promising starting point for a comprehensive land and resource legislation?

3.1 *The new Land Law as an attempt at an integrative, cohesive legal approach*

Without doubt it is necessary to **explicitly repeal Decree #100 Land Law from 1992** in order to minimize the risk of inconsistent and unclear future interpretations by the courts in and to improve legal security for all stakeholders involved. Taking into account the existing inconsistencies and loopholes in the old Law many interest groups in the country **expect a new legal starting point** with more clear-cut regulations, responsibilities and accountability than in the past.

These expectations will be disappointed and economic incentives will be weakened as long as a **gray areas** continue to exist in which clearly defined **deadlines** are lacking for when to apply the old or refer to the amended law. Costs for law suits and for gathering information will be high, increasing the incomes of lawyers and redirecting scarce international public funds to NGOs which try to protect the rights of vulnerable groups in this transition process. These funds could better be channeled directly to the **end users** thus improving their legal security.

As a new starting point in the management of land affairs and related resources the new law will form the backbone for most economic relations, in particular in Cambodians rural areas which are still strongly dependent on primary production and the transformation of nature into economic goods and services. To be workable the new Law requires a wide range of well elaborated **complementary legal instruments** in order to be **implemented** and applied. Some of them are already mentioned in the draft but not yet designed, put into action or amended. Examples of such pertain, among others, to

- the restoration of immovable goods currently held by the state to those former owners which are already known to the authorities (=> Anoukret) (Art. 5 of the drafted Land Law)
- the selling or management of state lands (is there really a plural of land?) (=> Anoukret) (Art. 16)
- special regulations for concessions (=> Anoukret) (Art. 55)
- leases of commercial and residential buildings (=> Kret) (Art. 116)
- leasing of agricultural lands for cultivation (=> Kret or Anoukret) (Art. 118)
- restrictions in construction and urban building due to public interests (=> Anoukret) (Art. 121).

Other such complementary instruments do already exist and do indeed contribute to the new law fulfilling its tasks: the Decree on the Mission and Organization of the Land

Register System (Art. 237) or on methods for surveying the land to be titled. Others are already in discussion, such as the regulation of fees for registration (Art. 238).

On the other hand, the draft refers to existing legal texts which, following the statements of legal experts, create major problems in their application, such as the **existing Civil Code** or the onewhich was valid before 1970 (Art. 68, 85). They do not fit to the requirements of a more open civil society and an emerging market economy.

3.2 Competition between the drafted Land Law and related legal texts: an unresolved dilemma

Is the draft Land Law intended to serve as a **coordinating platform** for all land and resource tenure related issues? Is that why it refers to and attempts to harmonize different sector-oriented and cross-sectoral laws, such as drafted Forest and Fishery Laws, the planned Water and Environmental Law? From an economic (and legal) perspective, at least, it should do so. **Property** must be defined universally and neither depending on different right-holders (individual, state, community) nor according to its utilization in different sub-sectors of the economy (irrigated and non-irrigated agriculture, forests or urban areas). This property must - in principle - be **available to all market players and non-market organizations**, which, of course, includes the state as one actor besides others. Property can only be transferred in conjunction with **other legal bodies**, such as contract law, family and inheritance law, tax law or water law. Chapter III, 1 has shown that this was exactly intended with the new law.

However, in taking into account the **coexistence** of the drafted Land Law and the drafted Forestry Law³ as one example only, a **dilemma** becomes apparent: On the one hand, the Land Law gives clear orientation for the allocation of property rights in land and other resources and for their transfer. On the other hand, it explicitly excludes several important sectors from its application, when stating in Art. 9 "...Property law governing immovable goods varies in accordance with the requirements of the Khmer society, insofar as agricultural land, forests, waterways, reservoirs and expanses of water, sea shores, riverbanks, urban property, land for construction and zones of industrial development are concerned. Specific laws add to or will add to the provisions of the current enactment or shall constitute exceptions to such enactment taking into account socio-economic needs".

With Article 9 the law loses much of its value as an **integrative, enabling framework** to cope with complex land/resource tenure structures in the country as these **cannot artificially be re-separated in the same law** if efficiency, equity and sustainability in land and resource use were to be achieved and sector change to be enabled. Therefore any special treatment of forests and forestry land or other resources as a de facto sepa-

³ Referring to: Forestry Law of the Kingdom of Cambodia, Draft II, from November 30th, 1999, Phnom Penh, Cambodia.

rate land tenure regime in Cambodia is hardly acceptable and can only be interpreted as the result of an internal power play between different line agencies.

An additional confusing fact remains: Why are **state forests** mentioned explicitly a second time in a separate article (Art. 14) in the Land Law? If this is done with respect to their actual or potential economic importance why aren't natural lakes or rivers also dealt with and mentioned at a prominent position in the Land Law . They, too, are of crucial importance for inland fisheries ?

In its *Art. 14* the Land Law incorporates forests as one component of the public domain of the state and, therefore, gives clear guidance for the allocation of different kinds of property rights to forest resources as well as for all permitted or prohibited transfer modes for these rights. The land law is neither silent on regulations for concessions (*Art. 54ff.*) nor, and that is of particular interest, on the many aspects of communal resource use, one of which is especially related to indigenous communities (*Art. 19ff.*). The drafted Forestry Law picks up many of these aspects (e.g. *Article 24 on Forest Concession Agreement*), leading to the **duplication** of basic concepts, **misinterpretation** and even **contradictions**.

At least three additional steps are necessary to **improve legal security** from the very beginning of any drafting of new laws:

- a **Common understanding and mutual acceptance** are needed within the Cambodian government authorities and the administration about giving **priority to the Land Law** in defining basic property rights, relevant land tenure regimes and transfer mechanisms for these rights. A Forest Law, in turn, should concentrate on and **limit** itself to the **particularities of forest and forest product management**, forest protection and reforestation issues. It should not repeat or re-interpret general rules and regulations pre-determined by the Land Law.
- b A much closer **cross-check** is necessary as to whether all resource-related legal texts in the process of preparation are compatible with each other and non-contradictory to the Land Law, which must be at the center of resource related legislation;
- c As the **MLUC plays the key role** in the design and implementation of land administration and land development for the country it has to take the lead in **coordinating this work** and take care to avoid new future sources of conflict due to misinterpretations between line ministries.

These steps involve at least a gradual **re-distribution of existing power structures** between line-ministries and departments: the ongoing legal reforms and a streamlining of responsibilities for land and related resource issues may weaken those ministries or departments which in the recent past have been responsible for the use and exploitation of valuable natural resources, such as timber, forest products or sweet water fish. As long as these primary sectors strongly contribute to the GDP and export revenues, as long as forest and fishery concessions represent a desired object of rent-seeking activi-

ties of concessionaires or an instrument to keep the military quiet, it will be **difficult to shift the responsibility** for setting rules and regulations to the Land Law and the MLUC as its implementing agency.

In short, the answer to the question as to whether the new Land Law can form a new starting point can only be a careful and qualified yes. However, in itself it is not yet a comprehensive remedy smoothing the way to an undisputed and coherent land policy framework. To the contrary: as long as it remains only an **empty shell** with loose and/or conflicting links to other legal bodies there is a danger that it will create further confusion in giving leeway to illegal transactions and additional law suits.

4. Does the Land Law impede economic development and sector change?

Referring to the classification of **public property** and **private property of public entities** (already mentioned in III.1), the drafted Land Law shows imbalances and distortions.

The Law stipulates that property which falls within the **public domain** is inalienable and not subject to prescription (Art. 15). Only temporary, short-term and revocable licenses to occupy or use it may be accorded. Is such a license equivalent to a concession which actually is a widely accepted means of temporary transfer of property rights in agricultural and forest land? As forests fall into public domain and as concessions are dealt with in detail in the drafted Forestry Law this seems to be the case. To outsiders these semantic differences are not easily understandable.

In dealing so much with the definition of the state domain, the Cambodian government is continuing the tradition of the **'strong state'** which tries to maintain its influence on 'public' land even in an **emerging market economy**. It must be doubted, however, whether, in the current transition period which is characterized by an alarming land accumulation and the arbitrary allocation of concessions, the state is indeed the most **appropriate custodian** of land for different groups in society as well as for **the public interest**. The question also arises whether the rigidity of the law does not **artificially cement existing socio-economic structures** for the future. The recent history, not only of Cambodia, has clearly shown that an active role of the state in land and resource administration in itself is by no means a guarantee for efficiency, equity and sustainability.

For fostering future economic development, for allowing for further devolution of state activities and for strengthening of private sector and civil society organizations (all kinds of foundations, non-profit organizations) **the law is too restrictive**: it does not allow for the allocation of long-term use rights (leasehold) or even the selling of land in the public domain in case no further predominant public benefit and interest exists.. As an outcome of severe long-term budgetary constraints, the limited tax revenue base and restricted royalties and fees from concessions or tourism, a **gradual privatization** of the

existing railway network, of ports or airports, of public education and health services eventually may be necessary in the future.

What is surprising is that the Land Law, on the one hand, defines very clearly what is part of the public domain while, on the other hand, remaining silent on a clear-cut definition of what is property of the **private domain of the state**. Does this stem from the fact that no clear assessment of state assets is possible at the moment because the registration process for public lands and real estate is not yet finished? Or is it because this vagueness leaves open a leeway and a grey area for manifold land transfers between the public and the private sector without sufficient public control and accountability?

Any future regulation of the leases or sales of land from the private domain of the state is left to the formulation of new *Anoukrets*: As long as the material basis of what implies this private domain is not defined, the design of these *Anoukrets* will be a complicated task. What is more, the Land Law is silent on **which national administrative unit will be responsible** for all these activities of administering public and private property of public entities. To whom will economic agents have to address themselves in case they want to apply for leasehold, a concession or any other kind of contract between private sector and the state?

5. The central state, deconcentration and decentralization

At least in theory, the drafted bill already anticipates pending decisions on deconcentration of state responsibilities in the country. In the case of **deconcentration** the decision-making authority will be transferred to lower-level units of an existing bureaucracy, or government line agency, which means that authority remains with the same type of institution, and the onus for accountability ultimately still lies with the central government (Meinzen-Dick & Knox 1999).

In several articles (e.g. Art. 6) '**territorial public authorities**' are mentioned which actually are all part of a three-to-four-tier administrative structure. As long as only the deconcentration of the activities of national line ministries to lower instances, such as provincial offices and rural communes, is initiated they all represent 'the state' and therefore have to implement top-down approaches from the center. But even then, necessary rules and instructions for local implementation through lower-level line agencies are still lacking. To make the Land Law workable on the local level in future, much more time and financial resources are needed to accomplish the pending tasks. It is not certain that all necessary sub-decrees and regulations for implementation will be prepared and put into action as fast as this was done for the Sub Decree on the *Procedure of Establishing Cadastral Index Map and Land Register*. If such is the case a real danger exists that it will take decades to make the Land Law and related legal bodies workable in all its dimensions.

In trying to allocate stronger property rights and responsibilities for the management of land, water and forest resources to **indigenous communities** (Art. 19ff.) or local communities (in the case of forest or water use), more far-sighted approaches should have

been anticipated in the drafted Land Law: true ‘ownership of collective property’ (in terms of the draft, Art. 19) requires the **decentralization** of both decision-making authority and financial independence and responsibility to lower levels of government and administration. Although still acting within the government, it provides a stronger role for local bodies, which are presumed to be more accountable to the local population, that is to say to both, users of land and other resources and non-user residents in the area (Meinzen-Dick & Knox 1999). The Land Law is silent about models for local governance structures and fiscal revenue issues. They are neither tackled in the Law itself nor are references made to other legal texts either currently in preparation or already in force.

The drafted Commune Law (February 2000) gives new perspectives with regard to decentralization, local governance and cost recovery mechanisms for public expenses e.g. for the case of land registration. An early fruitful exchange of concepts and a closer coordination of planned legal instruments between the Land Law and the Commune Law would help to avoid duplication in legislation and parallel work in the implementation process.

6. Revitalizing a restitution problem?

With *Article 5* of the drafted Land Law the government seems to overturn its previous clear position on the question of restitution of lands owned by private persons prior to 1979. It states that “...immovable goods currently held by the State or public persons in respect of which the former owners are known, must be restored to such former owners in accordance with conditions provided by an *Anoukret*”. Thus detailed regulations for open restitution questions in the Land Law are promised by way of this planned Sub-Decree (*Anoukret*). However tentative an announcement, this also will give way to a **new wave of restitution claims** and court cases based on insufficient evidence (lack of written documents to prove the claim). As nearly all former private land came into the hands of “...the State or public persons” in the 70s and 80s, all the activities to settle the land problem since 1989 will thus be put into question again.

Such a discussion will be **poison for legal security, the rule of the law and the investment climate** in the country. Evaluating the experiences made in Germany, South Africa or South-East-European transforming economies during the last decade, the socio-economic consequences will be the following:

- a lack of or **postponements in investments** in all sectors of the economy, but particularly in land consuming activities, such as intensive agriculture or agro-forestry, as well as in millions of small (farm) enterprises;
- under-investment due to insufficient foreign capital when credit lines have to be revised by the commercial banking sector just in case **land as a collateral** is -again- under dispute;
- **high public costs** for the economy (fiscal burdens) due to delays in infrastructure

development, public work projects or concession delivery while land claims are pending ;

- high indirect **social costs** due to lack of investment in education, training and health facilities, in particular, for the rural population;
- the danger of an ongoing **disentitlement of vulnerable groups** from the land they actually possess in case of successful claims of former owners leading to broad based social unrest and political instability.

A critical revision and/or clarification of Article 5 of the Land Law is urgently required in order to preserve the fragile trust relationship between state agencies and millions of land owners and land users in urban and rural areas.

7. Expropriation in the public interest

The drafted Land Law makes provision for the **expropriation⁴ of property in the public interest** (*Art. 2*). Although this paragraph is much criticized in the public debate, not only in Cambodia, as it may pave the way for uncontrolled, arbitrary decisions by government and lower-level administration, it is, without any doubt, a necessary element of any Property Law or Land Law in any market economy. It gives government and its administration - at least in theory- a legally defined and legally binding instrument to develop and implement technical infrastructure, urban and rural planning strategies, to foster sectoral transformation through land conversion or even to limit land accumulation.

In order to make such an instrument socially acceptable as well as workable in a society which is traumatized through arbitrariness in decision making and manifold kinds of expropriation in the past, some **basic requirements have to be fulfilled**. To assure future certainty of the law, rule of law and confidence of private and public investors in the political system and to act as a cornerstones of an emerging civil society and a market economy, any legislation containing an expropriation clause must, place high emphasis on

- a very **clear definition** of what is **‘public interest’**, making the concept transparent and creating accountability for those responsible in the process;
- **legal procedures for expropriation** in the public interest, including very clear regulations and yardsticks for the valuation of compensation based on the real value of the land and
- mechanism of consultation and of conflict resolution (out-of-court, courts) for cases of diverging interests.

⁴ Referred to in the draft as ‘deprivation’.

All the **procedures** for the expropriation process have to **compromise** between different objectives and shortcomings:

- safeguarding the economic and legal interests of (former) private owners,
- taking into account the very limited fiscal base of the central state and its agencies (are there alternative instruments - through private-public partnerships- to compensate owners? Are such alternatives reliable to them, inflation-proof and timely enough?),
- simplicity, timeliness and cost-effectiveness of the procedure, in particular of transferring compensation either in cash or in kind (equivalent piece of land) to expropriated parties;
- assuring the timeliness of state planning activities.

Transparent regulations for compensation, in turn, require country-wide applicability of **land valuation criteria**, both, for urban and rural lands, for housing, industrial or agricultural areas (for technical requirements, see Part IV of this report). In cases where **land markets** are already flourishing (as in urban areas) average land prices can act as a first indicator. In other cases, some broad and widely applicable **categories on land quality** have to be developed. These categories have to form an unambiguous basis for **government committees** in assessing the case and for calculating the compensation such that arbitrary decisions on a case to case basis can be avoided.

Here, MLUC should take the lead to give impulses for the formulation of the *Anoukret* for expropriation and compensation mechanisms mentioned in *Art. 2* of the Land Law. This can only be done in very close cooperation with the

- Ministry of Justice (to materialize the term ‘public interest’),
- Ministry Economy of Finance (guidelines for compensation, financial responsibility) and, depending on the actual case,
- Ministry of Public Works (technical infrastructure programs);
- Ministry of Environment (protected areas);
- Ministry of Agriculture (irrigation schemes) or
- Ministry of Water (water catchment requirements) etc..

IV. Remaining challenges, shortcomings and options in developing a Cambodian land policy

If we have to accept that at present the land policy in Cambodia can be only identified on the basis of the existing legal texts, the country will be confronted with a range of problems for the near future: 1. the integration of so-called public lands into the registration process, 2. finding a land policy answer to the existing complex and intertwined rural resource tenure systems including private and communal rights, 3. the challenge of proliferating large-scale agricultural and forest concessions for the future agrarian structure, for land concentration and landlessness, 4. an urgent need for inter-ministerial coordination and cooperation at all administrative and regional levels, and 5. the creation or improvement of institutions and mechanisms for conflict resolution or containment.

1 Integrating the registration of so-called public lands into existing practices for private lands

The existing mismatch between the reinforced attempts of the MLUC to demarcate and to register private lands - not only in urban areas but particularly in rural areas - and the severe shortcomings and problems to formulate and to implement a **comparable system of demarcation and registration** for land and real property in the **state domain**, will have severe economic, social and political repercussions for the near future.

The poor state of systematic assessment of state landed property cannot be separated from the recent political history of Cambodia:

- a the complete destruction of all registers, including public ones,
- b the distribution of district and other public lands after 1979 to the rural population for agricultural purposes and
- c the ongoing transition of the country into a market economy which has been accompanied by 'wild' selling of state land to private investors at all regional levels from 1993 on.

De facto, **no clear regulation** exists under which conditions so called public land can be sold, rented or gifted by the local administration to the private sector, to small farmers, to military commanders and their troops, to returning refugees, to defected Khmer Rouge or to others. No legal text provides procedures how to legitimate the ongoing transfers ex post through, for example, the delivery of titles or other legally binding documents. No regulation exists as to who is definitely authorized to negotiate contracts at the local level for public lands: is it the district or provincial governor alone, what is the role of the Ministry of Economy and Finance as the official trustee of these lands? How do they cooperate?

Some government representatives actually refer to public land as **non-utilized land**: evidence shows that apart from land lying fallow cultivated land is also transferred. What does non-utilized land mean? Some of the questions might be answered with the

drafted Land Law, others, such as the link between the registration of private and public land will definitely not be solved without a clear list of priorities in handling the issue set by the highest political authority and with the help of inter-ministerial coordination, a process which most probably will be a controversial one!

The draft Land Law develops a **more differentiated perspective on public land** compared to old Land Law from 1992. It follows the French inspired concept of the 'domaine publique d'Etat' and the 'domaine privé de l'Etat'. This concept has been revitalized for Cambodia and needs some thorough discussion in order to make its way of thinking more easily accessible, e.g. to government officials trained in the Anglo-American context, interested investors, development cooperation officials, NGOs etc.

As long as the limits between public and private domain and between public and private state property are not well delineated and registered, central government will not only **lose fiscal revenues** from ongoing permanent and temporary 'grey' land transactions within the public domain, it will also **lose credibility** with its citizens, the private sector and international donors. Why is this so?

- The central state, including its line agencies on the provincial and the district level, **lacks reliable information** about the amount of landed property at present in the hands of the state and being negotiable. This information, in turn, is a crucial precondition for any kind of **land development**, for land use planning, privatization strategies or public infrastructure investments.
- As a consequence, future conflicts about **overlapping rights between the state and private actors are pre-programmed**. This is in particular true as the central level, who is responsible for the national framework of technical and social infrastructure developments (road infrastructure, school and health projects), actually is not sufficiently informed about ongoing land transfers at the lower level. As the responsibility for demarcation and registration in the private sector lies within the Ministry of Land Management, Urban Planning and Construction and the one for the public domain at present lies in the hands of the Ministry of Economy and Finance, no easy information flow can be expected.
- The **dominating ambiguity** does not necessarily impede the completion of future sales, rental contracts or concession contracts. Additionally it gives leeway to all kinds of illegal and unmonitored contractual agreements between lower units of line ministries and private purchasers. It may, however, also lead to **a silent expropriation of state land** to the advantage of parts of the military and private enterprises following their own rules or local officials in the ministries and local governments also profiting from the transfer.
- With the implementation of the **planned decentralization** processes in the near future, more and more responsibility and liability for local land and resource management will be devolved from the central state in Phnom Penh to lower level authorities, such as communes, village committees, water user associations. The creation of distinct communal property rights regime - apart from state property (the old public property) and private property - presupposes comprehensive knowledge on existing

property relations for land.

2. Shaping the view on different land tenure regimes in rural areas

2.1 *How to make a living in rural areas? On the importance of private, communal rights and access options*

In rural areas, which give work to about 80% of the Cambodian population, the majority of the population does not only **survive** by cultivating intensively irrigated rice or vegetables on their **privately owned plots**, may they be already registered or not. They are as well dependent on **temporary and revocable rights** of utilization, either through different kinds of tenancy arrangements (based on fixed rent or on sharecropping) or through gifts or donations from third parties. They further rely on **access options** to resources which - in their perception - belong to a communal property pool (as regulated common property), such as forests and forests products, communal pastures, village fish ponds or the fish from rivers or from the Tonle Sap.

Therefore, a good part of their productive resources does not belong, under the current land and resource tenure regimes in Cambodia, to their **private domain**; on the contrary, it is still under the **public or private domain of the state**. Actually this opens the way for

- **diverging interpretations of existing rights** between the users, state administration and other interest groups, such as the military, or investors, sometimes with development cooperation projects as mediators or facilitators.
- smoldering or already open **land and resource conflicts** about the ongoing redistribution of agricultural lands, forests, fish ponds from their current status of public access to private owners which, in their perception, is just a case of straight forward expropriation and
- **conflicts about expropriations** of village lands for public investment programmes, such as roads or other infrastructure.

NGOs calculate that the average household in rural areas of Cambodia creates about 50 percent of its monetary and in-kind income from agricultural activities (in a narrow, conventional definition), about 25 percent from forestry use and another 25 percent from fishery activities. For these households, the three domains elaborated in the drafted Land Law (1. private domain, 2. public and 3. private domain of the state) form an inseparable production and consumption unit, giving them a basis for subsistence, income generation, employment and social security in old age and illness, an important facet while the nation state is not able to substitute these mechanisms through public or private insurance systems.

2.2 *Two case studies on the complexity of rural tenure regimes*

Two examples from a province in which the annual floods from the Tonle Sap have a strong impact on land/resource use systems underline the complexity of existing land tenure systems and the severe changes currently taking place in existing systems. (The different, often overlapping land/resource tenure systems are sketched in Figure 1.)

1. A “cashew growing Village”

- The village is located close to a **national road**, about 130 families of the village are actually concerned by land tenure problems and disputes.
- The General Department of Cadastre & Geography of the MLUC has started (following the Sub Decree on the *Procedure of Establishing Cadastral Index Map and Land Register*) to **survey and to register** the residential areas and the agricultural lands which were indicated by the local population to be private property.
- This includes rice **fields far outside the village** which -after the redistribution and parceling of land of the former producer cooperatives- belong to individual families. Due to increases in the water levels of the Tonle Sap these fields are **flooded** for some months in the year.
- Due to the national road detailed regulations apply inside the village in regard to permitted **minimum distances** for the construction of houses to that road (25 m at both sides).
- Some of the land which was claimed as **communal village land** in the past today is cultivated with cashew plantations. They are the result of a complete change in farming practices in the last decade when upland cultivation for cashew nuts, pineapple and bananas emerged in the area.
- Although originally being village land, many of the cashew plots have been **bought** by **influential persons** from the province capital. They represent non-registered private property from the point of view of the owners and of the village population. These business men are known to the village community (who must have accepted the transaction and whose representatives must have profited from it). But the village community does not reveal their names to outsiders as many of the villagers work for them on the plantations as **laborers** and are desperately dependent on these new incomes.
- Thus, with the change of farming systems in the village, **man-land relationship** has also changed dramatically. Peasant farming is complemented or even substituted for by wage labor.
- What is more, the plantation land is part of a **protected area** as it is close to a hill with a tourist site. It is claimed by the Ministry of Environment and the Ministry of Tourism and Cultural Heritage. Within a radius of 7 km any agricultural activity is forbidden, following existing legislation (which means that not only the cashew nut plantations but most of the rice fields as well would fall under this cultivation ban).
- The mountain under discussion is not only a **tourist site** but also regarded as **forest**

land although deforestation is much advanced. This is true for some even more remote hills as well to which the village population has access options. This land outside the adjacent community village land is regarded as an open access area where the principle ‘first come, first serve’ applies. As forest land and part of the public domain of the state it is, of course, claimed by the Department of Forestry as well.

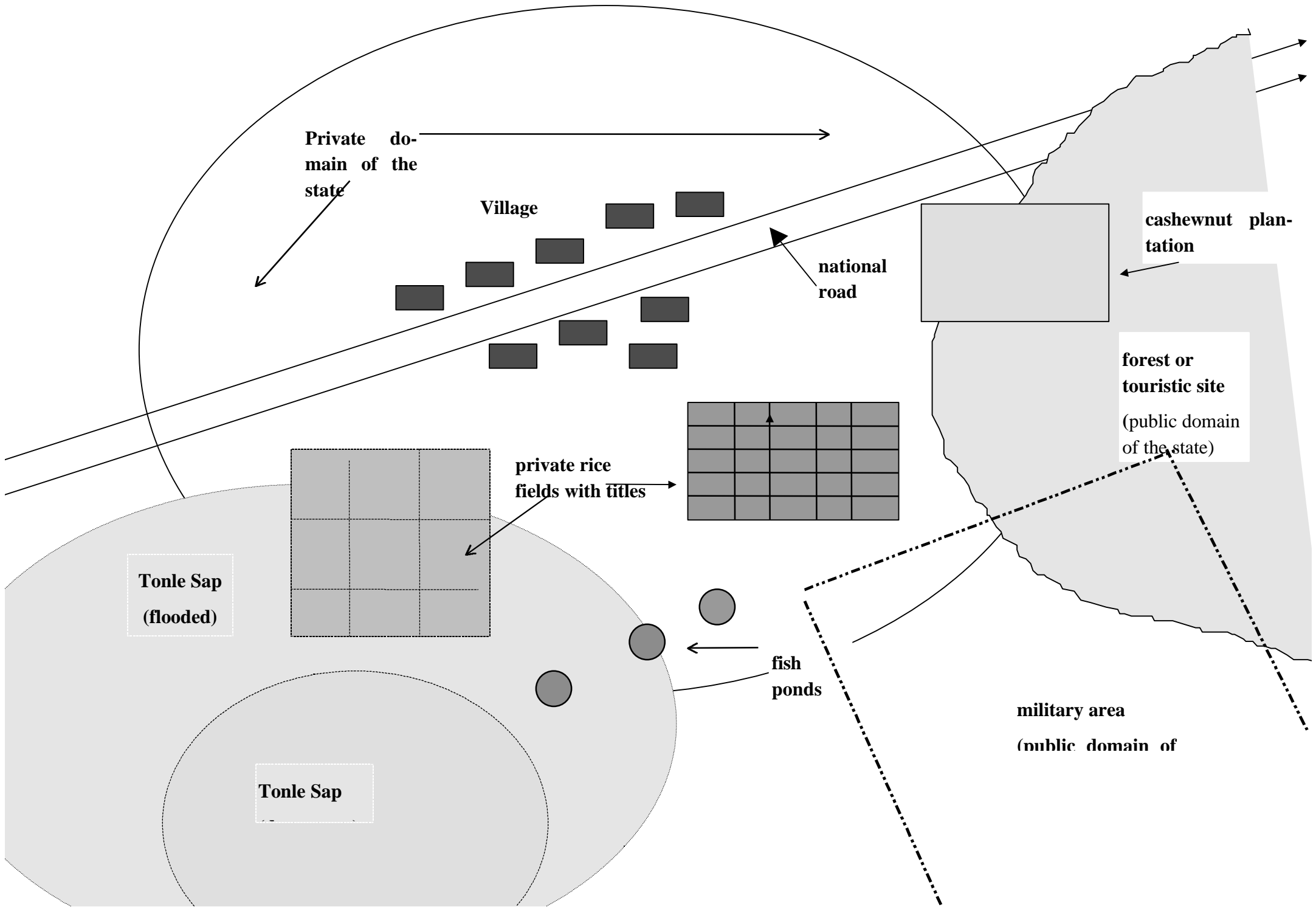
Should it be decided, for example by the district and province administration, that the forest and tourist area is to begin around 200 m from the national road many village plots (for housing and agriculture) will be included in the public land zone. As consequences no more land registration will be possible for these lands and private owners (from their own point of view) will have no more chance to get the land titled although they may have permanently cultivated these plots for many years and may face no competing claims within the village community.

2. A "Fishery Village"

In addition to the many problems arising to individuals from the loose definition of private and public property rights which became apparent in the first case study, problems also arise for the ‘fishery village’ as a whole:

- It is located much closer to the Tonle Sap and was, in the past, much more **dependent on fishery activities** as an important source of income for the local population.
- Actually, they have **lost their access** to the fishing. Due to **new fishery concessions** accorded by the state and the extension of fishery lots, these concessions **encroach** well beyond commonly delineated areas into their traditional fishing grounds and their village lands.
- Furthermore, **fish ponds** which are outside the presumptive village and have been managed by the village in the past were given to **outsiders** by local authorities following the well known auctioning process for fishery lots in Cambodia (see Degen & Thuok 1998). The village lost their access to these ponds as they were protected by para-military troops in service of the new owners.
- An open access problem applies for those **fish ponds** which are located **within the village boundaries**. Here, foreigners who invade mostly at night in a kind of raid into the village exploit the fish stock and cannot be prevented from doing so. Legally these ponds represent an open access resource in which the local population has no property rights and therefore cannot exercise sanctions.

A clear understanding of the village boundaries shared by the local population, local and central administrations (mainly responsible for the allocation of fishing concessions) is still lacking. This is leading to manifold other problems which cannot all be mentioned here in the short case study.



2.3 *Strategies for the assessment and registration of communal property rights in rural areas*

What can be learned from all this **for a the development of a coherent and sustainable land policy**? In order to better integrate the interests of the rural population as a crucial but often neglected key group for socio-economic development of the Kingdom of Cambodia, such a policy has

- 1 to **identify the whole spectrum of different property rights** in land and related resources in order to protect the livelihoods of the rural population,
- 2 to **allocate them clearly to the existing tenure regimes** which have to be in line with the regulations of the drafted Land Law,
- 3 to **check critically** the new Land Law as to whether all de facto existing rights and options can be integrated into the text or whether **amendments** are still necessary in the course of the preparation phase of the Law,
- 4 for **the central state** and its line agencies to **acknowledge and to protect** this wide spectrum of rights at the different local levels and
- 5 to **reallocate existing funds** for this task and try to acquire additional international funding.

The surveying of **private lands** and their registration is an important starting point for the implementation of the whole process. Nevertheless, the examples stated above have clearly shown that **a parallel in-depth identification of further ‘secondary’ rights of utilization** is of utmost priority for sustainable rural development in the future. If not all existing land categories and tenure regimes are assessed in the course of the registration of private property, Cambodians will have to live in a system of distorted, two-level tenure security.

The apparent lack of financial, technical and human resources at all administrative levels may be an important obstacle to perform these activities in due time. However, this argument often only disguises a **lack of political will and commitment** among parts of the administration, certain political decision makers and influential pressure groups which generally are interested in preserving for as long as possible the ambiguous status quo in tenure relations in the countryside. The case studies have clearly revealed that the existing vague legal and regulatory framework make the appropriation and expropriation of lands in the public domain of the state and even of private lands by influential third parties much easier than would be the case under a coordinated system of clearly defined private, communal and state rights within an area.

Unfortunately, **empirically sound experience and information** on the complex system of property rights of an ‘average’ Cambodian village is **scarce**. Possible sources for information at short term can be:

- existing written data of the Department of Cadastre & Geography at **MLUC** which has already collected much in-depth information in the last six to eight years,

- background information from the **civil servants** of this department working in the field and having been confronted with the whole spectrum of problems and controversial cases in the past,
- written and background information of **other line agencies** of the government, such as the different provincial and district services;
- written reports and background information from the different **programmes and projects of international development cooperation** working in the villages, in fishery concession areas, in agro-forestry areas or in towns. This may be either on the level of government cooperation or on the level of NGO work. It includes the results of baseline surveys or action-research oriented approaches making use of PRA or other participatory tools,
- where more information exists on local **land** respectively **resource conflicts**, one can also deduce from it some helpful information about the existing agrarian and tenure structure in the village;
- **long-term empirical and participatory research** on the relevant issues only seems to be at an infant stage. Some systematic data exist in form of socio-economic research undertaken by the Cambodia Development Resource Institute (CDRI), the applied research component of Legal Aid of Cambodia, OFXAM and some United Nations organizations (e.g. CORCHR, UNDP) working in the country.

Actually, some of these sources already have been or are being used for conceptualization and decision making in MLUC (e.g. the study on landlessness by the Oxfam Land Study Project, studies by WFP on the relation of food security and land tenure). Well trained senior experts work as civil servants in the former Land Title Department (LTD). They possess a wide range of experience and personal insight into the social fabric and man-land relations in the countryside.

This information may help to set a first framework which later on has to be filled in with much more detail. Such detail should preferably be collected in a collaborative effort by the different line ministries involved in the identification and demarcation of village boundaries and the resolution of differing claims over land or other natural resources for different purposes (see chapter 4 and 5 in this part).

3 Concessions, (foreign) investment and land concentration

It was the limited focus on the registration of private property in the recent past which has, without any doubt, facilitated the **acquisition of agricultural and forestry land by agro-industries** and important Cambodian **pressure groups**, such as the military, through concessions. Such agricultural and forestry concessions today have become contested and represent a bone of contention in the public debate in Cambodia.

On the one hand they are one of the few visible elements of the **agricultural development strategy** of the country: the allocation of concessions contributes to **fiscal revenues** for the central state through royalties, to **foreign currency income** and - in the

best cases - to **rural employment** as well as direct and indirect productivity increases through spill-over effects.

On the other hand, the **redistribution of agricultural and forest land from small-holders** to big private enterprises or the military has both, direct or indirect effects on the **rural economy and social fabric**: if agricultural land so far cultivated due to rights of occupancy is transformed into large scale concessions, peasants will lose their independence as family farmers and will become laborers on the concessionary plantations or farms. Both, **farming systems** but as well **agrarian structures** and **man-land relations change** completely.

In cases where **state forests** are given to concessionaires for exploitation the rural population is affected indirectly as they mostly **lose one important complementary source of income**, i.e. through the collection of wood and forest products. Up to now well established long-term contracts between concessionaires and local users rarely exist although they are de jure foreseen by the Decree on Forest Management Concessions (from February 7th, 2000) through a **Forest Concession Agreement** (Art. 5.6).

As a result of concession activities the **land and resource base** for the majority in rural areas **is shrinking without them being compensated** by other access options or additional land, for example, from the public or private domain of the state. With regard to land use and rights of possession an increasing allocation of concessions will go hand in hand with an **alarming land concentration** in Cambodia.

For a post-socialist country in transition, which for two decades followed a strong ideology of equality in productive resources such as land and practiced collectivization, the actual land concentration in Cambodia has reached an outrageous rate. If one follows information from CDRI the *Gini-Coefficient*⁵ for land distribution in Cambodia is about 0,65. Ten years after having started the transformation process into a market economy it is already **higher than the one for Thailand**, a country whose economy has been guided by market principles for decades.

With the establishment of large scale concessions the Cambodian government, therefore, has shown itself ready to **pay a high price** for a presumed increase in efficiency, in particular through large scale agricultural production⁶. Judging from the narrow existing empirical data base the existing rate of **landlessness** seems to amount to about 15 to 20 percent in the country (van Acker 1999). Any acceleration in the allocation of concessions will further contribute to landlessness and an even **more skewed land distribution**. The economic, social and political consequences (poverty, malnutrition, political unrest and social upheavals) can be far reaching not only for overall economic development but also for social and political stability in the country.

⁵ The Gini-Coefficient is a mathematical explanation of the Lorenz-Curve and can vary between 0 (perfect equality) and 1 (perfect inequality).

⁶ Whether large scale agricultural production is in fact more productive than small scale farming is a controversial issue among agricultural- economists. In case of standardized cultivation of cash crops in a plantation system advantages in efficiency through economies of scale and economies of scope normally overcompensate the imputed (transaction) costs which arise from labor incentive- and control-problems.

The question on how to **assess and evaluate the impacts of forestry and agricultural concessions** is, therefore, not a trivial one

- for decisions on the desired **pathways of rural development**,
- the real versus the desired **land and income distribution** and
- patterns of **sustainable resource use**,

as, to take just one example, the **recent development in Kampot-Province** clearly shows⁷:

In addition to many locally **smoldering or open land and resource conflicts** (see below), the allocation or awarding of agricultural and forest concessions represents a **far-reaching external intervention into existing agrarian structures** and the social fabric not only on a local but as well on a regional level in Kampot province:

In one case **agricultural concessions** of about 49.000 ha were allocated to Chinese and Malaysian enterprises for manioc production to transform it into tapioca. In other cases 10.200 ha have been given to a foreign company for rubber production, another 16.000 ha for palmoil production, 5.700 ha for cashew nut production and another 4.000 ha for mulberry tree production, while a further 15.100 ha are earmarked to become concessions. The list could be extended. A minimum of about 95.000 ha, have thus been reserved for agricultural concessions. Even if one considers that concessions are normally not adjudicated in the most fertile rice growing areas, the sizes of land allocated for export oriented cash crop production are remarkable compared to an average rice growing area of less than 1 ha per household in Kampot Province.

The socio-economic consequences for the **local population** will be the following:

- the companies occupy land which was already cultivated by small-scale farmers mostly for upland farming. They will either be **expelled** from the area and have to look for other vacant land in the vicinity or get an offer to work on the concession ground as **paid laborers**.
- Their **expropriation** normally takes places **without any kind of compensation** in kind (new plots for cultivation) or in cash (no legal basis, no land valuation!). Many of the concession contracts between government and enterprises were already signed in the mid 90s with the old Land Law in force, so that they cannot claim ownership rights on the plots which would give right to a future title under the drafted Land Law .
- Although mentioned in the draft Land Law no clear regulations based on the rule of law and legal security do exist currently which would **acknowledge at least their rights of occupation** or to **give a voice** to their position in the negotiations between the central state, resp. the provincial authorities and the investors about management

⁷ The following cases were first discussed in public by NGOs and were confirmed in a discussion with one of the Vice-Governors of Kampot Province in his capacity as Chairman of the Provincial Committee for Land Disputes. These committees were founded to put into practice the order of H.E. The Prime Minister to settle land disputes.

contracts. It is only on the basis of the order of the Prime Minister for the installation of conflict resolution committees that provincial or district officers try to find out-of-court solutions at short notice.

- In cases where former smallholders will be employed as laborers they will **lose**, of course, **their independence** in decision making and farming activities to be performed. In Cambodia up to now this independence implied, in particular, a minimum degree of **food security** throughout the year as well as over the years and some freedom from market price fluctuations while peasants were, at least partially, subsistence oriented in food crop production.
- As a consequence **agrarian structures** as a whole change completely: the relative importance of **food crop production** at a regional level will decrease and will be substituted by **export-oriented cash crop production**. There are no indicators that dramatic productivity increases can be expected on the remaining production areas in the province: the diffusion of bio-chemical and mechanical **technical progress** is slow, so is the increase in complementary inputs, such as extension programmes, rural credit etc. The consequences for food security are, thus, not clear and give rise to a pessimistic view.
- The local population is well aware of the loss of lands and tries to formulate and to **protect their interests** through demonstrations in Phnom Penh (in front of the National Assembly) and by **mobilizing the media**.

Experiences in Kampot Province clearly indicate that the allocation of concessions outside of a clear legal and regulatory framework, without basic the rule of law and legal security inevitably leads to severe **land use conflicts**. They all follow a simple mechanism, as the case of an agricultural concession for the military shows: In 1995 the provincial authorities donated cultivable land to the military. This land was classified as empty, uncultivated land. Immediately after this allocation the area became the target of a spontaneous, **illegal influx and encroachment of new settlers**. The new settlers started to build houses and to cultivate the land, expecting their self-created rights of occupation later to be accepted by the state and getting legalized. They either hoped to escape any forced expulsion and displacement or to be compensated by the new concessionaires or the government. In the end it is always the provincial administration which is forced to expel these new settlers from the concession ground, to make it accessible for the concessionaire and enforce the law. The same applied for the tapioca concession.

The only case in which the execution of a signed contract between the state and the concessionaire can be stopped is when owners can prove that they have a **legal title** to the land. But as we know from the preceding chapters land titling in post-war Cambodia remained at an infant stage and nearly all old documents were destroyed. The probability of such cases is thus very low.

Only little information actually exists on the **number of people concerned** with land tenure problems related to the allocation of concessions on their grounds. In the case of the tapioca concession in the central Kampot area the provincial committee for land dispute resolution has estimated that 'only' 62 families are concerned. No additional

data is available from other, independent sources until now.

In summing up, one has to concede that the establishment of large-scale concessions **creates a wide range of new land policy relevant problems**. Nearly no concepts for solution exist until now and no actors can easily be identified to be responsible for it:

- The provincial or district administration is either a part of the problem or a victim of the existing legal vacuum. In some cases they have been responsible in signing contracts with the concessionaires without checking the rights of local occupants of the land and are now forced to evict them in order to enforce the contracts. In other cases far reaching decisions were made on the central state level and the content of the contracts is not even known to the local administration (with regard to duration of concession, surface, agreements on labor recruitment from the local population, etc.).
- Until now the administration has to decide on the basis of the old Land Law from 1992 which does not respect very much the rights of temporary occupants of landed property but regards all kind of settlement not based on a legal title as illegal.
- In many cases the contracts seem to be ill-balanced with regard to safeguarding the interests of the Cambodian state against those of private investors. Their legal position is frequently quite strong. They are given far reaching possibilities to delay their investment activities. Smoldering or open land conflicts, for example, allow companies to argue legal insecurity, while they blame illegal settlements for problems with the import of machinery etc. The Cambodian state has only few levers to accelerate the process, which in the end leads to severe income and tax revenue losses for the country as a whole.
- Even if where unexpected but legally sound land claims are made (e.g. in case of non-respected property rights of third parties (farmers with legal documents)) the existing contracts, as a rule, cannot be canceled easily. The Cambodian state would be confronted with high costs for law suits or compensation of the companies. The number of current land conflicts involving concessionaires, either the military or foreign enterprises, is not very high. But several of the ones so far acute are severe, meaning there is not much chance of quick and sound solutions based on the rule of law and transparency.

4 Inter-ministerial coordination and cooperation

The land and related natural resources which are essential, complementary means of production for the rural majority to survive and to develop their families and villages are governed under the auspices of a **wide range of line ministries and special agencies**, like the

- Ministry of Land Management, Urban Planning and Construction.,
- Ministry of Agriculture and Forestry, in particular its Departments of Forestry and Wildlife and of Fishery,

- Ministry of Economy and Finance,
- Ministry of Water Resources and Meteorology,
- Ministry of Environment,
- Ministry of Tourism and Cultural Heritage etc..

Evidence shows that only a few real cases of coordination between these line ministries can be found . Rather than by **coordination** the situation seems to be characterized by a constant **lack of consultation**, deeply rooted reluctance towards each other if not jealousy about assigned tasks and responsibilities. At least this is the logical conclusion arrived at when evidencing the ‘products’ of the ministries or, to paraphrase it, the lack of products with regard to land tenure:

- the duplication and overlapping in the Land Law and other related laws,
- the obstacles in regard to surveillance and registration of public and private property of the state,
- the coordination problems at the local level in respect of defining village territories and allocating private and communal property rights or
- the insufficient coordination of land and water rights needed to intensify the production in existing irrigation systems, etc..

Therefore, one **precondition for any integrated and cohesive land and resource policy** is to start immediately with a far reaching, intensive **coordination process** between the different line ministries and related agencies including their provincial and district offices on basic issues, such as the

- **harmonization of the technical terms** used in land and resource legislation in order to develop the manifold overdue implementation regulations on the basis of common definitions (see as well V.1);
- identification of additional **practicable and cost-effective procedures** for the delimitation of different resources and related property rights particularly in rural and peri-urban areas,
- development of a **unified system for codification** of identified property rights, for which the land register under construction could serve best.
- development of **mechanisms for the resolution of conflicts** falling into the competency of more than one ministry; such mechanisms must be brought into line with the conflict resolution steps prescribed by the law (including the order on the establishment of committees for conflict resolution by H.E. the Prime Minister) and with out-of-court mechanisms which are under discussion or even in preparation in Cambodia.

Even if some ministries may feel prepared to take the lead and the final responsibility in this process due to long-term experience in one field or another or due to established power relations within the top administration, it should be the **principal task of MLUC to guide this process**. There are strong arguments in favor of MLUC’s key role:

- If one takes the draft Land Law as a serious attempt to regulate property relations in Cambodia and to act as a **focus** for other related legal texts, it gives a clear mandate to MLUC.
- MLUC has a **non-restricted, cross-sectoral mandate** compared to the Ministry and Departments of Agriculture, Fisheries, Forest, Tourism, Public Works etc. and can play a neutral, **balancing role** resolving interest conflicts between the ministries which are bound to occur as we have seen in the village cases
- This inter-sectoral view is not only necessary in negotiating with neighboring ministries but as well with the many different **projects and programmes** which are being applied by donor agencies in rural areas.
- MLUC should be able to see village and rural development within the perspective of **sector change** and accompanying **new functions for agricultural lands**, forestry, fishery etc.
- MLUC is entitled to install and to **further develop the land register** which can serve as the major document for different kinds of property rights in the village context.
- MLUC is a relatively ‘young’ ministry where administrative structures may not be as rigid as they normally are in old-established ones, leaving room for these new activities.
- MLUC has already been able to establish and to intensify productive working relations with local governments in several provinces. Local governments are important players for a successful implementation in the future. With them the delicate task of demarcation between private and public lands, of village boundaries and of dealing with dispute can be shared.

This does not mean that old established structures which are present on the central, provincial and district level in other sectors do not persist in some regards in the MLUC as well. As some of the problems of land titling in the past decade can be attributed to these inflexible and often backward-oriented administrative structures (time-consuming, bureaucratic procedures, lack of monitoring of provincial offices, etc.) a **self-critical assessment** of existing organizational structures and capacities and the formulation of concepts for organizational development within MLUC may be advisable.

A more intensive cooperation and coordination is particular necessary to **avoid the emergence** or rather further **cementing of existing parallel systems** of land management and resource use. Currently there are

- systems within the general government structures which are - in principle- applicable for the whole country, but which often are only rudimentary and incomplete. They usually leave much room for misinterpretation, for local resource conflicts and a high level of daily **defection** of local users to the standardized, **blue-print rules** and regulations of a top-down approach; and
- systems within the local or regional structures of projects and programmes of devel-

opment cooperation, including **own sub-systems of assessment**, surveying and the management of land and related resources. These systems often work nicely in the project context but are sometimes only loosely linked with the existing or planned legal and regulatory framework.

To avoid an even further drifting apart of both models and an increasing legal and tenure insecurity in the country, one line agency has to take the lead in order to collect the dispersed information on existing resource assessment and land use plans and to identify the most urgent issues for harmonization or even forced changes in existing projects in order to bring them back in line with the legislation put into force in Cambodia.

5 Conflict resolution and conflict prevention

Land disputes on the **local level** in the village are not new in Cambodian rural society. From a socio-economic point of view it is not surprising that they emerged immediately after agricultural land was **re-distributed** to village families and other economic actors after the end of stone-age communism and the socialist era. This re-distribution happened without any comprehensive legal or regulatory framework being in force, in a situation of tenure insecurity, of lack of experience with the basic economic institutions of a market economy, such as private property, etc.

In the recent past NGOs and several UN organizations dealing with land conflicts state that they were mainly concerned with **'minor' cases**. These cases predominantly occurred and still occur **between villagers** and

- military commanders,
- ordinary soldiers,
- provincial or district government officials,
- politically influential people from the area, but as well
- between villagers and their local representatives, such as the village chiefs or
- between neighboring families.

In these cases it was mostly possible to develop solutions and **mutually acceptable procedures for reconciliation**, with NGOs acting as **mediators**.

More recently, **severe open land and resource** conflicts gain in importance; they are not any more restricted to the local level but have **regional impact**, as the concession cases reveal. The **public discussion** about these conflicts increases, as the daily press shows. Therefore, the work of MLUC in future will severely be influenced by the **different lines of conflicts** and the **strategies of pressure groups** to continue with their land grabbing strategies.

These are at the **interface between private** and state (former 'public') lands:

- between the **local population** and the **military** about land use in regions close to the villages which are exclusively reserved for the army but are necessary for income

generation of smallholder families;

- the **expropriation of land from smallholders** by **influential persons or companies** as a consequence of improperly defined property rights in the recent past, may this have happened in rural or sub-urban areas;
- between **private land owners** and **government agencies** about expropriation in the public interest and for technical and social infrastructure, such as roads, schools and other development projects;

Within the private sector:

- as a consequence of **twofold selling** or renting of the same plot of land caused by the allocation of only provisional titles which later on have not been officially acknowledged by the state, represented by MLUC and the land office;
- in case of **temporarily flooded fields** between the owners of irrigated rice fields and individual fishermen or legal enterprises having bought fishery lots on use rights;

Within the state domain:

- the **occupation of land which** - in the local perception - is regarded as village or family land by neighboring villagers, such as grazing land or fish ponds;
- between ministries on the assignment of public lands, such as forestry land, protected areas, tourist sites, etc..

Because of far-reaching interactions between agricultural, forestry, rangelands etc. and different secondary effects, it is not any more the sole responsibility of either the Ministry of Agriculture, the Department of Forestry and Wildlife or the Department of Fisheries to implement and to enforce the often conflicting legal and regulatory framework governing land and related resources. To make it very clear: in most of the relevant conflicts the MLUC cannot act as a mediator or a judge as it has a clear mandate to follow and has vested interests as well. But as a challenge for the long term future it can **strongly contribute** to conflict resolution by

- presenting **clear-cut and transparent criteria for delimiting zones of differing interests** between the line agencies and to make them acceptable to all players. This may be an outcome of its cross-sectoral mandate and experiences in land issues;
- acting as an **information pool and clearing center** in the administration for all kinds of data on land rights and land use issues in the country,
- developing **documentation and information systems** on promising examples of practiced conflict resolution;
- **monitoring and enforcing** the interests of all parties involved in the manifold conflicts presented above, making sure that they are all represented and taken into consideration,
- **consulting neighboring line ministries** in an effort to develop and improve contracts of land/resource utilization in concession areas, in the public and private domain of the state, to harmonize fishery lot and other contracts with a rental compo-

ment, to arrive at clearly defined and stable rights local user groups;

- **harmonizing and even unifying the existing land registers** on private lands under the responsibility of MLUC with the inventory of state lands, under the auspices of the Ministry of Finance and Economy, in order to set the founding stone for a unified land registration and land monitoring in the country and
- contributing substantially to the different national and provincial committees for conflict resolution which are actually developing everywhere in the country.

V. Land Management and land development strategies for the future

1. Clarification of technical terms

Before talking about strategies to improve land management and land development in urban and rural areas it seems to be necessary to start a **broad expert discussion** in the line agencies concerned about basic technical terms and concepts to be worked with in future:

- What does the Cambodian government and administration understand by ‘**land management**’? From an international perspective land management consists of **two elements**: 1) **land administration** and 2) **land development**. Following the manifold discussions with senior experts in the country, there seems to be no common understanding on the significance and reach of these concepts.
- It might be helpful to start an internal discussion based on a broader international background of existing experiences with land management and development (e.g. by taking into consideration the experiences from neighboring countries). This discussion should focus in particular on the question whether land management and the applied concept of ‘**master plans**’ for urban and rural land issues are still appropriate to the **changing demands** of planning in a civil society. Here, participation of all major stakeholders concerned is necessary
- Does the administration want to differentiate between creating master plans and **land use planning** in the country? If we understand land use planning as a concept being founded on the idea that development is a **process from the ‘bottom up’** and is based on **self-help** and responsibility for one’s self and an iterative process based on the dialogue between all the actors involved , we have to question if land use planning isn’t more than **determining industrial and agricultural zones** and special ones to welcome investors.

This clarification cannot be separated from an open discussion on training needs for government officials (see V. 3) and awareness creation for politicians with regard to the basics of land administration and land development (V. 2).

2. Priorities to establish additional instruments for land management and land development

With regard to the first component of land management, the implementation of a working **land administration**, considerable progress has been made in Cambodia in recent years. Nevertheless, a lot of work still remains to be done . As the analysis of current land tenure problems in the country has clearly shown, priority has to be given to the establishment of the following instruments and their implementation on lower administrative levels:

- 1 The **establishment of the land register** in all provinces has not only to be continued but also to be accelerated in order to create tenure security in all of Cambodia. With a continuation of the existing external support from *German and Finnish Technical Cooperation* (GTZ, FINNMAP) this process will take at least another decade. **Additional financial funds** coming from strong international donors, such as the *Asian Development Bank (ADB)* and the *World Bank (WB)*, will be needed in order to speed up this process. This has been underlined again by the final statement of the Consultative Group Meeting on Cambodia in May 2000 in Paris!
- 2 Additional funds are, in particular, necessary if and when an agreement has been achieved on how to **harmonize the registration of private and state lands** within one comprehensive land register system which allows for an easy transfer between the public and the private sphere. It did not become very clear, in how far all international donors are actually aware of the paradox of improving land registers while at the same time increasing legal insecurity due to duplication of institutions which are strictly complementary. If international donors, such as the EU, announce support for institutional development of some ministries, the mentioned coordination needs between MLUC and the Ministry of Finance and Economy may be an issue in daily work.
- 3 Before initiating any additional instruments for an effective, but relatively expensive land administration system, one precondition must be fulfilled: a **workable system of land valuation** has to be developed. This should get a very priority in the negotiations for international donor support and be implemented as soon as possible in order to
 - allow for a transparent and socially acceptable **payment of compensation** in cases of expropriation for public interest,
 - support the further **development of land and rental markets** in urban, suburban and rural areas,
 - reduce conflicts in cases of land selling, renting or in cases of succession when land values are not known or contested,
 - alleviate the **conversion of land** for new purposes (from agricultural to industrial or service sectors)
 - **rationalize the negotiations** between the **state and foreign investors** on concessions or leasehold contracts including the calculation of calculate royalties, fees or rents as a percentage of **discounted land value**,
 - **increase land tax revenues** and land transfer taxes or fees for the central state and/or the provinces.

Detailed plans on concepts for land valuation already exist in MLUC and are part of project activities of its Finnish and German partners. To get the process of having them materialized and implemented started s not only financial resources and professional staff are needed; the implementation of land valuation systems also makes a strong political will on all levels and between all ministries concerned indispensable .

This political will may be weak due to a lack of information about the advantages of the system or due to the fear of more transparency and accountability.

Any attempt to create such a system over the short term has to **compromise** between the **requirements of accuracy** in the assessment of different kinds of soils and land types, the assignment to different land use patterns (ranging from agricultural or forestry purpose up to plots for construction) and the **imputed direct and indirect private and social costs** of such a sophisticated system. As the planning on land valuation systems in Cambodia is only at an **infant stage**, there is ample possibility to identify a system that fits best into the socio-economic and institutional environment in the country. Here as well, **one donor agency** should **take the lead** in initiating (and financially supporting!) the search for available options and models in neighboring countries and to support the Cambodian administration in their proper decision making process.

- 1 Once land valuation is established on a inter-subjective transparent basis **land banking** will be an additional instrument to be developed in order to facilitate public investment and land conversion within the transitionary economy. Beside the requirements which emerge from the increasing sector change and economic development, land banking is also important in Cambodia in order to reserve land for specific target groups, such as poverty prone landless people, female headed households or for the demarcation of protected areas. In case deconcentration and decentralization will proceed, communal land banking will support urban and village planning strategies. Reserve plots, for example, are necessary for exchange when some quarters are to be newly identified as industrial or housing zones. Together with a functioning land register this system allows for clarification on who owns a plot of land in urban areas which is apparently empty, to identify alternative equivalent plots for him/her to be given in exchange and to facilitate urban planning.
- 2 With land valuation established urban and local communities, the provinces as well as the central state can rationalize their system of direct taxes, royalties and fees for public services. Based on the assessed land value a **land tax** can be calculated which respects the different purposes of land use as well as the income streams emerging from this use. **Land transfer taxes** can more easily be related to the average value of land in a certain region. Land valuation gives a legally acknowledged lever to the state to assess the real value of the land in case contract partners try to hide the real selling price from the tax office. The same is true for **royalties** for concessions which, then, more adequately reflect the discounted value of resource extraction by the concessionaires.

With regard to the **instruments for land development** many gaps and existing loopholes still have to be filled to make the concept workable in the Cambodia context. This is not to criticize the tremendous achievements which have been made up to now in establishing instruments for land management after only one decade of transformation. It is more to show perspectives and future orientations to accomplish the very broad task and

motivate those which are responsible for the implementation of land management instruments to proceed further on the long way to go.

Although **no strict sequencing** in the establishment of instruments for land administration and land development should be proposed, it will be helpful to build up first a solid basis for land policy strategies through land administration tools and to concentrate in a second step on instruments for land development. In Cambodia these should include the following:

- 1 **Agrarian Structure Development Planning (ASDP)** which is a planning and decision-making instrument, working in combination with **rural regional development, village development programmes** and, where necessary, with land consolidation programmes. It is only applicable for **regions** which are characterized by a **rapid structural change**, such as the sub-urban regions around Phnom Penh, Sihanouville, etc. It is particularly effective, where existing agrarian structural deficiencies need to be remedied.
- 2 **Land consolidation and land readjustment** is, without any doubt, the **most comprehensive** of all instruments. It is not only used to eliminate deficiencies in agrarian structures in general, but tries to influence **existing land ownership relations** and to **match the existing land use patterns with the existing land tenure systems**. It, therefore, will play an important role in the future development of intensive agricultural systems, such as **irrigated rice production**, but as well in programmes which seem to be intended by the government in order to **resettle urban squatters** in rural areas.

Not much is actually known about these plans but if they are intended to become successful and avoid a cat-and-mice game between squatters and urban authorities, farm units have to be developed which allow to realize **economies of scale** through mechanization, the **cooperative use of machinery** etc. With the portrayed instruments of land development important preconditions can be set to make a rural living more attractive than in the past and to reduce, over the long term, out-migration into towns.

- 3 The scattered, decentralized attempts of development cooperation projects and the smoldering resource conflicts have revealed that (participatory) **land use planning** is urgently needed on the local level. In order to be successful it cannot be implemented in a top-down manner but has to be implemented by **local target groups** which can be supported by government and development agencies as **lead agencies** (so-called co-management strategies). Any implementation of land use planning truly affects the tenure rights of individuals or of communities. This is true for urban and rural areas.
- 4 Special instrument exist for **urban land development: Urban land readjustment** was developed as an urban planning tool in Europe and was altered for the local conditions in Asian countries, such as Japan or Korea : a lot of their economic success is attributed to this method/ instrument. In Thailand they have some good experiences with what they call 'land sharing'. In particular the legal and organizational prerequi-

sites for the transfer of land used for construction are created and appropriate programmes developed. The principle is the following: urban land owners relinquish a part of their property in favor of infrastructure facilities and urban development measures and get compensated with another piece of land (or cash). Therefore, a functioning land valuation system is a prerequisite.

The instrument **changes the present structure of land distribution** in towns in accordance with urban planning guidelines. In the best case, it **implements guidelines of urban land use plans** with the **active participation of all owners involved** and enables the conversion of agricultural land in sub-urban areas to be or expected to be developed for urbanization, development or rehabilitation without speculative deals. It is only one of various options for **matching urban land use requirements with urban ownership structures** which normally do not fit completely together. It is ideal for areas with small plots where the majority do not want to renounce their right of ownership or are interesting in building or rehabilitating themselves. It requires strong **partnership between the municipality and the private sector**.

Although it is, in principle, an urgently needed instrument for **agglomerations** such as the capital, Phnom Penh, it is **doubtful if it can be implemented** easily over the short or medium term. Too deeply rooted is the fear of another expropriation and the mistrust in the state so that many owners do not easily agree to the exchange of their plots. Too fresh are the memories on land grabbing and land laundry in the urban context to place trust in the activities of the private sector, e.g. in private land development agencies. Therefore, it will be a long and stony way to implemented this instrument.

- 5 **Urban squatting** will become an ever increasing problem for Cambodian municipalities. Experiences in many other countries have shown that a strict control of the influx of the rural poor into towns is impossible so that **innovative models for dealing with squatter settlements** have to be developed carefully. It is, therefore, doubtful if the currently practiced **policy of forced resettlement** to remote rural areas is a promising policy approach. Violent solutions for the enforcement of existing land rights are not promising and inappropriate in the light of the dynamic and unchangeable urbanization process the major cities of Cambodia.

Models for a **peaceful solution of illegal settlement problems** can be comprised of the following steps: a) initiation of a formal or informal structure for the communication and cooperation between government institutions and affected parties, b) integration of squatter settlements into urban planning and development, c) linking of rehabilitation and legalization programmes, c) support for organizing the affected parties (active participation) and their permanent involvement in the process of planning, decision making and implementation, d) development of a locally adapted model for granting legal security of property through well defined leasing contracts, through land trusts or other forms of legal status and e) appropriate financial participation of the affected persons for the costs of basic infrastructure (water, sewage disposal, perhaps electricity).

Without any doubt, **standard solutions cannot be presented**, but as in other countries, **innovative solutions** will be necessary in Cambodia, too, in the near future. Perhaps it is too early to expect from RGC to rethink its current policy of a ‘strong state’ in dealing with illegal settlements. It very much depends on the success or failure of the current practice whether there will be room for thinking along new lines in the near future.

In summing up, **more discussion** and **fact finding** seems to be necessary on what will be the approaches MLUC and other line ministries are to follow in starting with implementation. Is a ‘master plan’ an instrument which can serve as a yard stick for urban and rural planning in the future? How do politicians, practitioners, donors evaluate top-down, **hierarchical planning methods** and more **participatory approaches** against each other by? Is there enough **technical knowledge** to make a final decision on the most appropriate instruments for urban and rural areas? If not, what do MLUC and other responsible parties want to identify as **reference models** to be followed? Is there sufficient **confidence** in relying on external support and advice in such delicate affairs like land affairs?

3. The role of planning at different administrative and regional levels

A discussion on the priorities for the implementation of instruments for land administration and land development cannot be complete without tackling the **responsibilities and tasks** of the different existing administrative levels in Cambodia. What are the minimum levels of planning for the administration, for local populations involved in order to allow for a rational planning of land administration and land development issues?

- The village, sub-urban and urban quarters form the basic unit for the allocation and distribution of natural resources, such as land, to the different economic actors. The experiences from many countries in the world clearly show, that for the implementation of instruments of land administration and development, **more participatory approaches** might be more time consuming and expensive in the short term but give better, i.e. more sustainable results in the long term.
- Before losing ground for land use planning and other instruments of dynamic land management to the different projects of international donors a strong initiative is needed on the national level in order to present to them a clear-cut land use policy. The cornerstones of this policy must be set by RGC in order to give donors a clear orientation for their activities on the local level. If this does not happen within the next year, Cambodia’s country side will become - from an institutional perspective - a patchwork of different arrangements for land allocation, informal land registration, land use planning concepts. They, of course, represent good intentions and follow the objectives of participation of the local population but as well a good part of the ‘development philosophy’ of the different donors. They will not have much in common with regard to rules applied, committees created, sanctions developed, etc. Although well intended, too many isolated initiatives may even create additional land tenure and land management problems for the time to come.

- Therefore, it has to be stated again, that MLUC should take the initiative to formulate some basic regulations and rules for the implementation of instruments. What is needed in particular, are more clearly defined **procedural rules and regulations** which have to be applicable to all donor programs and projects. This work cannot, of course, be done with the existing human and financial resources in the ministries (see below). Experiences from neighboring countries should be incorporated as well. Also an intensive dialogue with external resource persons should be intensified initiated as soon as possible building upon the first promising experiences in the first month on the department level in MLUC.
- Strong coordinating capacities and new initiatives are, therefore, required from MLUC and from the donors supporting its work in order to harmonize the different approaches and give orientation. Intensive personal day-to-day communication and consultation is necessary to bring together the different donor ‘philosophies’ and approaches and to keep the technical staff motivated. For MLUC this means a continuous technical and human resource support through international experts and exchange of thoughts and strategies has to be assured for the next months.

4. Training requirements

After the long isolation and the terrible loss of human knowledge and expertise under the Khmer Rouge regime, it is not surprising that Cambodia is still short of human resources to implement the process at the national, provincial, district and local level. This isolation has also prohibited any long-term exchange between experts on an international basis in the relevant technical fields. Many of the senior officials actually working in the line ministries had been trained in socialist countries in the 1970s and 1980s. These countries had a completely different understanding of planning processes and of their implementation in society.

Therefore, it seems to be necessary and urgent for development cooperation at all levels to continue with the support of **on-job training** and **international exchange of working experiences** in the near future. This learning by doing process will support the formulation of new concepts of land management as well as the reform of existing ones for the next years. Those technical experts which are well trained and are able to manage the most recent tools and techniques are constantly overloaded in their daily work so that they are only in part capable to act as catalysts for junior staff in their own country.

Much has already been done with regard to training activities in MLUC: getting familiar with computerized land surveying, mapping and developing a computerized land register system, the transfer of knowledge from the national level to some provinces in which pilot areas are identified. The same applies for neighboring line ministries. The **success of the implementation of innovative instruments** will be crucially dependent on the progress in **staff training** which in part has to precede the technical implementation and /or to be done simultaneously. Thus, MLUC is in a dilemma: training on-the-job is a lengthy and cumbersome work, additional training facilities are needed in order

to enlarge the training programme beyond the impressive activities which are already under way. Potential donors should, therefore, beware of the fact that further support of MLUC cannot concentrate on technical innovations alone which are often more visible and more easy to assess in their impact but have to be reoriented more to long-term commitment on training activities.

It would go beyond the capacities of this report to identify in detail the necessary training models. At this point in time only some guiding questions can be posed as a yardstick for orientation:

- Which kind of training would be in line with the existing jobs and tasks to be performed?
- Which training modules can be implemented in Cambodia and which have to be conducted in cooperation with agencies in neighboring Asian countries? Do such loose professional networks, e.g. between development agencies or international professional associations exist which classes or courses can build upon?
- Who will train the Cambodian experts which themselves will later on work as trainers and multipliers?
- Can private - public partnerships be identified in order to share costs, for example in the field of surveying, of other rather technical jobs which will be done by private enterprises in future or in the field of land use planning activities?

5. Mechanisms for conflict resolution in land management and land development strategies

The local design and implementation of strategies for land development and land use planning will **not be harmonious processes**. It is through the application of these instruments that smoldering land and resource **conflicts** will come to the surface. If teams of civil servants start together with the local population to identify and to demarcate different land use zones for agricultural, industrial use or for housing and village boundaries will be fixed conflicting interests become apparent and will be laid, at least to some degree, into the hands of the local, regional and national administration. To cope with this new **responsibility** some basic mechanisms for conflict resolution have to be developed and specialists have to be trained to do this delicate job:

- Legal norms and requirements as well as legal practices are actually not completely in line in Cambodia. Although there is no doubt about the **primacy of the judicial system** and the relevance of court decisions for economic incentives, social peace and political stability, more and more **out-of-court solutions** are looked for. Besides formal models for conflict resolution informal ones, often created in silent understanding between the local administration and NGOs or other development agencies, are applied in the many land and resource conflicts which are reported by the NGOs and others for the last years.

This parallelism actually helps a lot to **increase the confidence of the ‘ordinary**

people' in the state and its institutions. Without out-of-court resolution mechanisms claimants would have to wait for years for decisions as courts are not only overloaded but are also understaffed and ill-trained to cope with new categories of law suits in a market economy (contract law, family law, law of succession, etc.). Nevertheless, a **vision** and a concept are necessary on how to delegate responsibilities of courts and out-of-court committees for the future in order avoid the emergence of different legal and judicial systems in the country.

In many other countries **applied research and practical experiences in projects** and programs underline the importance of indigenous knowledge, of unwritten and handed-down autochthonous rights and regulations to be applied in resource conflicts before 'modern' written law should be applied. In how far these ideas are applicable to Cambodia remains doubtful: The Khmer Rouge dictatorship has uprooted the existing social structure and fabric in urban and rural areas, most of the formerly acknowledged mediators and local judges have been killed, families have been displaced all over the country and have formed new villages elsewhere. Following the scarce information about the social structure in pilot villages of development projects, **social cohesion** seems to be still very low and intra-village conflicts and tensions are the rule. Therefore, it seems to be **over-optimistic** if not naive to think about a revitalization of the power of indigenous tenure rights and regulations as a guideline for conflict resolution in Cambodia.

- Applied research on the preconditions and **effects of collective action** to foster the management of natural resources, such as communal forests ('social forestry'), pastures, irrigation schemes or protected areas, in the last decade has underlined the importance of **cooperation on the local level** for successful and, thus, sustainable land and resource management. Even if the new legal texts support these ideas and instruments quite openly (the draft Land Law, the Forestry Law, the planned decree for Community Forestry etc.), the same question as before must be asked, the same arguments as before used: are the existing village communities really capable of developing a '**cooperative spirit**', cooperative, mutually assuring norms and regulations to practice Community Based Natural Resource Management easily?
- If not, the local population in the village as well as public administrations still have to go a long way to develop mechanisms for conflict resolution and sustainable land management, which find a proper balance between incentives from 'above' and initiatives from the 'bottom' through participation and self-help.

To sum up: Although many NGOs seem to have gained already much practical experience practical experience on the emergence of conflicts, their typical patterns and ideas for solution from Cambodia (e.g. Center of Conflict Resolution, Legal Aid of Cambodia, Oxfam and UN organizations) at this stage a next step of exchange of working material, systematization and structuring seems to be necessary in order to decide on the most appropriate institutions and mechanisms for **conflict containment and conflict resolution** on the local level. As we have seen that the village population simultaneously makes use of many complementary resources and as conflicts in most cases cannot be restricted to land issues only, an intensive **coordination and cooperation be-**

tween MLUC and other ministries is necessary for the implementation of tools and mechanisms for conflict resolution. As MLUC is the lead agency for land management in the country it cannot leave this initiative to other ministries which are much more sector-oriented and have a more narrow mandate to perform. Here, another great chance is given to MLUC to strengthen its leading position in determining or at least influencing a future oriented land policy for Cambodia.

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