

Term of Reference

A Study on the Exclusion of the Urban Communities From the Systematic Land Registration in Phnom Penh

1. Background

The multi-donor supported Land Management and Administration Project (LMAP) began in 2002 as the first phase of the Government's land reform program and was established to give effect to key provisions of the 2001 Land Law¹. LMAP is a comprehensive land administration and management project including promotions to develop relevant land policy, legal and regulatory instruments, capacity building, land conflict resolution mechanisms and land titling and registration. The Development Objective of this project is to assist the Royal Government of Cambodia to implement its Land Policy Program as spelled out in May 2001, and more specifically to improve land tenure security and promote the development of efficient land markets.²

Systematic land registration (SLR) was initially conducted under the donor funded Land Management and Administration Project (LMAP), which originally focussed on 10 provinces and the capital, Phnom Penh. This project has since ended but SLR continues to operate under LASSP and active in 15 of Cambodia's 24 provinces, plus the capital³. Total land title delivered from 2003 to end of September 2011 is 1,740,839 titles and the figure for land titles issued in Phnom Penh was only 62,934.⁴ In addition to land registration, government has set up another new action for land registration which is called "Directive 01" and this program has had considerable success in issuing less than 380,000 land titles by June 20, 2013.⁵

The Ministry of Land Management, Urban Planning and Construction (MLMUPC) has also established dispute resolution mechanisms that work specifically to resolve disputes over unregistered land and disputes that emerge during the registration process. These activities are now implemented under the MLMUPC's Land Administration Sub-Sector Program (LASSP)⁶.

In Tumnup Village, Phnom Penh, for example, and although 861 families live in the village, only 195 parcels were adjudicated and only 41 titles issued, which means only 1 in 5 of the total adjudicated plots were registered. The reasons for the exclusions from systematic land registration in Tumnup Village were not entirely clear, although several contributing factors appear to have impacted on the SLR process. These factors combined meant that the adjudication process was highly complex, and the SLR process was cut short during the survey and demarcation stage⁷.

¹ <http://www.cohre.org/news/press-releases/cambodia-world-bank-investigates-land-titling-project>

² <http://siteresources.worldbank.org/INTCAMBODIA/147270-1174545988782/22303366/FINALERMREPORT.pdf>

³ Access to Land Title in Cambodia, NGOF-November 2012

⁴ Land Administration Sub Sector Program Newsletter "Land is life", Issue 2 November 2011

⁵ The Ministry of Land Management, Urban Planning and Construction "Notification on the result of Directive 01, 2013"

⁶ Access to Land Title in Cambodia, NGOF-November 2012

⁷ Ibid

Additional SLR is one of the processes to provide land registration for excluded communities while this process is part of the land registration in circular N^o06 issued by MLMUPC that this additional SLR process could only be applied in cases where the land parcels are within the adjudication area but where the landowner missed out on the process for legitimate reasons.⁸ The MLMUPC agreed in principle to allow additional SLR to be conducted in Tumnup Village, and requested full information on the excluded families. However it was pending from the time the MLMUPC issued the approval letter dated since December 06, 2011.⁹ Moreover, it hasn't yet been applied elsewhere for exclude communities across the country.

2. Problem Statement

Land Management and Administration Project (LMAP) focused on the development of regulatory and legal framework; institutional development; land titling and registration; strengthening land dispute resolution mechanisms; and land management. The main factor in the design of LMAP which blocked vulnerable households and communities from accessing title such as areas “likely to be disputed” and areas of “unclear status” were excluded from the system. These terms were not defined in the project design documents, allowing for the arbitrary exclusion of areas from the titling process.¹⁰

There were high levels of exclusion from the SLR process and there were also a number of disputes involving high numbers of households in conflict with one or two powerful and well-connected actors in the urban villages in Phnom Penh.¹¹ These exclusions were observed to have taken place in the absence of any clear legal process. The legal framework for SLR contains no legal provisions for excising areas from adjudication areas because they are “too complex” to adjudicate, and thus it is not clear what legal justification there is for such exclusions. In Phnom Penh, the exclusions were conducted in an atmosphere of low transparency, and access to information was very poor. There was no formal complaint mechanism for the people who were excluded, and for the most part they only found out that they were denied land titles after they heard that the SLR process had already concluded. There is currently no publicly available data on the prevalence of exclusion from the SLR process, and it is therefore difficult to assess how widespread the issue is and what impact it may be having on the broader success of the land registration system¹² and its impact on the livelihoods of the resident especially women and children.

In addition, the exclude areas from the titling and registration process resulting in the absence of an official mapping of state land is a real source of concern for those under threat of eviction because absent these maps, the relevant municipal authority can exclude from titling any portion of land surveyed and proposed for adjudication by the cadastre team and therefore titling it, implicitly, in the name of state. Actually, the absence of State land mapping is recognized as significant shortcoming that needs to be addressed for LMAP to succeed and help solve land conflicts and security of tenure.¹³

⁸ Circular N^o6

⁹ Access to Land Title in Cambodia, NGO-NOVEMBER 2012

¹⁰ Formalizing Inequality: Land Titling in Cambodia 2010 (Natalie Bugalski and David Pred) or visit this link http://www.landaction.org/IMG/pdf/LRAN-9_Formalizing_Inequality.pdf

¹¹ Ibid

¹² Access to Land Title in Cambodia, NGO-NOVEMBER 2012

¹³ World Bank, July 13, 2009 Enhanced Review Report “Cambodia Land Management and Administration Project”

3. Goal and Objectives

“Exclusion” refers to areas have been excised from adjudication areas prior to or during the process of survey and demarcation, and to those cases where land parcels are left unregistered due to having “unclear status”.

The overall goal of the study is to identify the impact of the exclusion of the urban communities from the systematic land registration in Phnom Penh on livelihoods and the reasons behind this exclusion. With this goal, the study aim to:

- Identify urban communities where the communities excluded from systematic land registration across Phnom Penh
- Understand the plans and reasons of government for the exclusion as well as other factor contribute to this exclusion
- Identify the current livelihoods of the locality especially woman and children inside the exclusive land compare to the livelihoods before
- Understand the impact on the livelihoods of the locality especially woman and children inside the exclusive land

4. Research Questions

The study aims at finding answers to the following questions:

- 1- Where are the urban communities excluded from land registration in Phnom Penh?
- 2- What are the reasons why communities are excluded?
- 3- What are the current livelihood of the locality include women and children compare to the livelihoods before?
- 4- What is the perception of community toward the exclusion?
- 5- What are the impacts on the livelihood of the locality?
- 6- What are the possible alternatives suggestions for the communities?
- 7- What are the constructive recommendations to deal with exclusion cases?

5. Research Scope and Limitation

The study will be conducted in the whole city of Phnom Penh, where the land registration has already been covered and urban communities are excluded from systematic land registration. This study will explore deeply into the current livelihood of people who live in the exclusive land but not all about human capitals. Moreover, this study will cover and focus on the exclusion cases from land registration programme in Phnom Penh only, but it will not represent the exclusion cases across the country.

6. Significance

As there is lacking of the document and comprehensive report related to the exclusion from systematic land registration programme and its impact on local livelihoods. So, there is a need to assess its impacts on a broader level to make poor and vulnerable people benefit and satisfy with the systematic land registration programme as well as the resolution for their exclusion cases. Moreover, this research will be contributed as the evident based in advocating for the right of the affected community. At the same time, this research report will also contribute to the enforcement

of policy and law as well as bring the attention for the policymakers and government to take action for the improvement of community rights and reduce poverty.

7. Methodology

7.1 Approach

The study will employ desk review and qualitative approaches. The qualitative approach will help to gain insight into why lands are excluded and how people feel about their lives. However, to illustrate the percentage in some context in the research report, the study also needs to employ some quantitative data analysis where facts and numbers will be presented. In addition, the research will use triangulation method to verify and get more information from difference sources. Following are some of the many approaches that are used for conducting this research:

Interview: Both semi-structured and unstructured interview will employ to explore a better understanding of the information. This will include household interview and key informant interview. Semi-structure questionnaire will be designed for households interview, whereas unstructured or guideline questions will be designed for the key informant interview.

Case Study: This research will conduct few interested cases study to illustrate intensive and in-depth information in the specific case in the report.

Focus group discussion: This approach will be hold in order to get more and in-depth information from the group of people. So, this study will conduct some focus groups discussions with communities' people to cross check the information for the report. Focus group discussion will be designed to have 6-7 participants in one group and participant should be ones whose know much about the specific issue in exclusion area.

Informal Observation: It is one of the important tools that help researcher to understand the situation in the village by observing the location and people's activities and conducting informal conversation with people as well as keep record to the notebook at the end of each day. Doing so, researcher will have much idea when writing report.

7.2 Target Respondent

This research aims to investigate and elicit the information from the ground and national level to ensure the reliability and quality of report. The target respondents are the communities' people, local authorities and local NGOs at the areas selected and other stakeholders including the relevant government ministries, national and international NGOs.

7.3 Sample Size and Site Selection

In Phnom Penh there are six Khans such as Chamkar Mon, Sen Sok, Toul Kork, Dangkor, Meanchey, Doun Penh where systematic land registration has been and/or is currently underway. Therefore, the areas selection of the study will be in Phnom Penh where exclusion is happened in communities. The study will be selected at least 30 percents of all the total exclusion areas. However, specific target areas and number of respondents will be identified and discussed more detail at the latter stage once the research consultant has contracted.

7.4 Obligation Requirements

The research report produced by research consultant has to be reflected the objectives set and responded to the research questions where scope and limitation of the study including **gender issue** is also focused. Both Khmer and English report will need to be produced by research consultant.

The research consultant is obligated to respect the timeframe of research and ensure the quality of information (data collection), report, and the translation version as well as provide the weekly update of the progress of research activities to NGO Forum.

8. Activities, Time Frame, and Responsible Person

The research consultant or research consultant team will carry out the task from **mid July to the end of December 2014** as illustrated below:

Activities		Time Frame and Responsible Person					
		2014					
		Jul	Aug	Sep	Oct	Nov	Dec
1	Revise Research Proposal (including research design)	Research consultant					
2	Comment on Research Proposal	NGOF & WVC					
3	Desk Research	Research consultant					
4	Develop questionnaires & Pre-test	Research consultant					
5	Comment on questionnaires		NGOF & WVC				
6	Data collection or Field work		Research consultant				
7	Data processing		Research consultant				
8	Data analysis		Research consultant	Research consultant			
9	Develop and submit first draft*			Research consultant			
10	Comment on first draft			NGOF & WVC			
11	Review and submit second draft				Research consultant		
12	Comment on second draft				NGOF & WVC		
13	Finalize and Submit final report				Research consultant		
14	Check final report				NGOF & WVC		
15	Translate the document					Research consultant	
16	Check & comment on the translated version					NGOF & WVC	NGOF & WVC
17	Prepare slide both Khmer & English and present to NGOF&WVI & Launching Date**					Research consultant	

Note:

*The research consultant is required to submit the first draft no later than 15th September 2014.

** The consultant is required to produce both English and Khmer slides and give presentation at launching date. (The launching Workshop will be held in April 2015)

9. Expected Output

The report of this research will be documented and distributed to the relevant stakeholders such as local authority, NGOs, affected households and especially to government as basic information for consideration, attention and improvement for land registration program. Moreover, this report is also expected to bring dialogue with policy makers or implementers of the program to take poor and vulnerable people who faces exclusion problem for better resolution.

10. Partnership

This research is initiated and collaborated by the NGO Forum on Cambodia and World Vision Cambodia.

11. Consultancy Fee

The selected research consultant will be offered a package or a lump sum payment according to their qualification, work experience and research proposal submits.