



# Human Rights Assessment of the German-Cambodian Land Rights Program (LRP)

Monika Lüke

Editing

Lisa J. Shermann, Anna Würth

## Imprint

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Study

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## Foreword

Development programs are an important contribution to progressively realize human rights. For this to occur, the partners in a development program need to have a clear human rights orientation or policy, backed up by a governance structure in the respective sector which is conducive to participation, non-discrimination, transparency and accountability.

The right to food and the right to housing are key economic, social and cultural rights for development processes. The right to food empowers people to feed themselves, be it as producers or purchasers of sufficient and nutritious food. The right to housing guarantees security of tenure for settlers and dwellers on agricultural or non-agricultural land. Both rights protect smallholders and large scale agriculture alike, and as such are important for sustainable agricultural production, innovation and investment.

The following assessment of the German-Cambodian Land Rights Program analyzes whether and how this development measure contributes to the progressive realization of human rights, in particular to the right to food and the right to housing. The program has had a clear human rights orientation since 2011; and even before that, the program has enabled a significant proportion of Cambodians, particularly women, to gain access to secure land titles. However, the assessment also finds that the program needs to undertake significant efforts to reach other vulnerable groups and to increase its accountability vis-à-vis the Cambodian population.

The assessment was commissioned by the Federal Ministry for Economic Cooperation and Development (BMZ) in May 2012. It is based on a desk review of available documentation, interviews in Germany, and a mission to Cambodia in June 2012. While a large scale Cambodian land titling campaign was announced in May 2012, the overlap with the mission to Cambodia was too short to allow for more than a very preliminary appraisal of the campaign. Thus, the large

scale Cambodian land titling campaign is not covered in this assessment.

While the terms for and results of this assessment were shared and discussed with the BMZ, the implementing agency, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), and representatives of the Cambodian administration, all views expressed in this study represent the opinion of the German Institute for Human Rights, as an independent National Human Rights Institution.

Assessments like this one, while methodologically ambitious, are an important means to monitor development programs for their contribution to human rights. The German Institute for Human Rights commends all stakeholders for making this endeavor possible.

**Michael Windfuhr**

Deputy Director

German Institute for Human Rights

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# Executive Summary

## Objective

This report is an independent assessment of human rights issues related to the German-Cambodian Land Rights Program (LRP), which began in March 2011. The assessment was neither tasked to evaluate the impact of German predecessor programs in the land sector nor to undertake a legal assessment of the LRP's sphere of influence and thus does not do so. The assessment aims to gain insights which can be used for management decisions by the BMZ as well as for a possible next phase of the LRP (03/2013- 02/2016). The report is based on a desk review of available documentation and a two-week mission to Cambodia in June 2012.

The key reference framework for the assessment are human rights – standards and principles – to which both the Cambodian as well as the German governments have legally and politically committed themselves through ratification of international human rights treaties and respective constitutional provisions.

## Background

After the Khmer Rouge Regime (1975-1979) had destroyed the existing system of land rights and their registration, the 2001 Land Law constitutes the basis for a new system of registered land rights.

One of the major achievements in the land sector is the allocation of more than two million titles during the past ten years. This is by far faster than comparative processes in other Southeast Asian countries. But despite this success, the majority of Cambodians, and especially socially disadvantaged groups, still do not enjoy secure land rights. Without secure land rights, they more easily fall victim to involuntary resettlements, often executed by force, and remain with no access to remedies. In addition, the generally weak governance structures in Cambodia also impinge on

the land sector. Thus, accountability structures are very weak.

State officials and private actors do not consistently value the rule of law, corruption can undermine access to an independent and fair judiciary, and thus the general population does not trust the legal system.

Under conditions of insufficient governance, development cooperation has to be designed carefully and needs to reflect how donors can tackle the root causes for recurrent human rights violations and how they can prevent silent complicity with human rights violations or breaches of extraterritorial obligations. In reaction to the human rights and governance challenges in the land sector, the Cambodian and German Governments agreed on a Milestone Process to be implemented from 2012 through 2015.

German development cooperation has been active in the land sector since 1995. The Cambodian "Land Administration, Management and Distribution Program (LAMDP)" has been supported by Germany since 2002 through a development program called "Support to the Cambodian Land Sector Program". The objective of this development program is: "Poor rural and urban strata of the population are enabled to better realize their human rights to food and habitation". Since March 2011, this program is currently implemented by the GIZ through the "Land Rights Program" (LRP). The objective of the Land Rights Program is: "The proportion of Cambodians having legally secure access to land is socially balanced and has risen within the framework of a comprehensive spatial planning concept".

## Assessment

The assessment uses the five OECD/DAC evaluation criteria (relevance, effectiveness, efficiency, impact and sustainability). However, due to the task being an

assessment rather than an evaluation, the focus is on relevance and effectiveness of the LRP, reviewed from a human rights point of view.

## Relevance

**The Land Rights Program is relevant.** It has contributed to the registration of more than two million titles and therefore to the improvement of tenure security which is a key component of the right to adequate food and the right to housing. Interviews confirmed that registration of land provides protection against land grabbing and other forms of interference with property rights. While the 2001 Land Law, as well as the other statutes, decrees and ministerial or inter-ministerial decisions regulating the sector are by and large implicitly in line with international human rights and rule of law standards, their application and regulation by Cambodian duty-bearers is highly uneven. This is partly due to lack of specialist training, partly to a lack of strict follow-up measures and monitoring, and thus ultimately due to the lack of accountable governance structures in the sector and the country at large. However, there are notable exceptions, for example in the city of Battambang, where officials at the municipality facilitated sustainable on-site solutions for informal settlements.

The LRP is addressing the most vulnerable groups in the land sector: women, indigenous communities, those in informal urban settlements, and the landless and land-poor. Therefore the program has the correct focus from a human rights perspective. But the program needs to find solutions for systematic registration in conflictive areas and in areas where formal proof of ownership of rights is not available.

Unlike the predecessor programs, the LRP framework aims to make contributions to human rights, partly incorporating existing human rights analysis. The program has carried out an in-depth gender analysis covering all its three components. The gender analysis recommends a stronger focus on gender issues and the collection of disaggregated data. LRP has not undertaken a separate human rights analysis, even though precise data on the human rights situation are either scarce or contradictory. However, LRP included a GIZ human rights expert on its Project Progress Review (PPR) in June 2012 who was tasked to develop detailed recommendations for the next phase of the program. The recommendations were not available at the time of writing this report.

LRP offers technical advice to government officials – the main duty bearers – and encourages them to employ participatory approaches in the sector. Thus, LRP facilitates participatory processes between state officials, communities and NGOs in various regions to help reach progress on land rights. These processes currently focus on two issues; one is on achieving a form of tenure security for those in informal settlements, such as in Battambang; the other focus is to jointly work towards land registration for indigenous communities, such as in Ratanakiri. Given that many of the human rights challenges in the land sector stem from lack of capacity but also from the unwillingness of parts of the government to adequately inform the population and to consult with them and their representatives, **the program activities in this respect are very relevant and can serve as good practice.** Yet apart from participation and consultation, LRP does not specifically work on increasing the human rights awareness of duty bearers in the land sector.

## Effectiveness

Regarding **effectiveness**, the program contributes to fulfillment of human rights to housing and adequate food. LRP and its predecessor have altogether supported the granting of 2,165,692 land titles until June 2012. From March 2011 (the beginning LRP) until the end of May 2012 around 800,000 land titles have been awarded.

**Women have benefitted most from the 2001 Land Law.** 60 percent of those with land titles are women: 1/3 of these are individual titles, and 2/3 of the titles women hold jointly with their husbands. Women with joint titles will need to confer the title to their name in case of widowhood, divorce or separation. Women perceive this situation as difficult, but in their view the problems are rooted in the difficulty to obtain personal status certificates and documentation. Progress for women is hampered in many areas, as evidenced by gender-based violence, traditional roles and stereotypes. Therefore gender issues require continuous attention. But so far none of LRP's indicators is gender-specific. Overall, systematic registration and awareness-raising have contributed to improving land rights for women, and through registration of collective land rights the rights of indigenous communities are better protected. The program has successfully piloted social land concessions in favor of landless and land-poor in Kratie, and in Battambang LRP has made advances to improve the right to housing for informal settlers.



However, except for land rights for women, there is not sufficient progress with respect to the human rights situation of other target groups. With respect to indigenous communities, the landless and land-poor and those in informal settlements, the program has had difficulties in achieving its objectives. Thus there is a lack of effectiveness. Registration of collective land rights for **indigenous communities** is progressing too slowly. This is due to administrative hurdles, requiring lengthy procedures before three different ministries, and the clash of interests between powerful investors and the relatively powerless communities. With respect to **informal settlers** in Phnom Penh, who are under a particular threat of eviction, all of LRP's efforts to enter into discussions and eventually into cooperation with the municipality of Phnom Penh have not been successful. LRP is also behind its objectives with regard to the **rural landless and land-poor**. One important reason for this delay is that the government has not identified sufficient land for social land concessions. A sizable part of LRP's shortcomings with respect to effectiveness is thus related to the political will on the side of key Cambodian governmental actors and should be addressed accordingly. In addition, LRP will need to address its target groups more systematically to increase effectiveness: While the program framework focuses on vulnerable groups (see above), the actual activities to reach its objectives appear to be divorced from a strategy and remain isolated measures.

LRP effectively addresses some of the capacity gaps of officials at the Ministry of Land Management, Urban Planning, and Construction (MLMUPC) with respect to some human rights principles. MLMUPC officials are the main partners of LRP and the main duty bearers, and they increasingly work with participatory methods. Thus, the process of systematic land registration contains a number of participatory elements: MLMUPC informs about registration procedures in newsletters; it organizes information meetings at provincial, district and communal levels. The registration procedure requires participation of the title applicant and others affected by the registration (e.g. owners of adjoining plots); maps are publicly displayed to facilitate this participation. Political concepts in the land sector are shared and discussed with NGOs at the drafting stage. But NGOs report that the consultation meetings are scheduled at very short notice (1–3 days) which make substantial contributions and thus meaningful discussions difficult. Moreover, the criteria for the selection of NGOs to be invited are not clear.

Duty bearers at the MLMUPC do usually neither endorse nor observe the human rights principle of

**accountability** – in order to ensure predictability of state action, the observance of procedural standards, and to prevent the abuse of power. While the MLMUPC is required to report about progress to donors, e.g. to the Joint Supervision Missions, much more needs to be done to increase the domestic accountability of MLMUPC and its development partners.

**There is a lack of transparency** in some areas of the program: Nobody interviewed in the MLMUPC has been able to provide information about the criteria for the selection of provinces, districts and communes for systematic registration. Similar concerns apply to dispute settlements: MLMUPC has established administrative and cadastral commissions to solve land disputes; yet the criteria upon which a decision of an administrative or cadastral commission is based remain unclear, probably also for those state officials sitting in the commissions rendering decision-making more difficult if not arbitrary. This might contribute to the high number of unresolved cases in the Cadastral Commissions and at the same time further undermine trust in the existing dispute settlement mechanisms.

Naturally, LRP is neither able nor tasked to address the immense problem of arbitrary state action, and ultimately **discrimination**, in the land sector as a whole. Discrimination predominately affects areas which have not yet undergone systematic registration. In these areas, land is given away in Economic Land Concessions (ELCs) and other non-transparent transactions. MLMUPC is neither capable nor prepared to prevent these transactions, since Economic Land Concessions are authorized by other entities in the government. LRP's sphere of influence does not reach to Ministries that are not development partners. Yet the giving away of land as ELCs shows that awareness of the relevance of non-discrimination and inclusion of vulnerable groups is not rooted among key actors of the Cambodian government. Another example: MLMUPC imposes fees for sporadic registration: All those who apply for a title outside the process of systematic registration fall under the system of sporadic registration. Current proposals suggest a fee of USD 575 per transaction regardless of the size and location of property. These fees are discriminatory against those with small parcels and little income, and they form a barrier against registration and the legal protection of land rights.

### Impact

As for **impact**, the brevity of the mission did not allow identification of whether LRP had additional effects

beyond its immediate activities. While the competences of MLMUPC as LRP's main cooperation partner are largely limited to technical issues of land policy with registration at its core, **the question remains whether the LRP unintentionally has a stabilizing effect** on the political economy ruling the land sector which encourages land grabbing, forced evictions, and threats to human rights defenders. While difficult to prove or to disprove, LRP should reflect on this question continuously with all stakeholders.

### Sustainability

The highest risk to LRP's **sustainability** is political in nature; i.e. if arbitrary land transfers, forced evictions, and ELCs are not halted, the system of systematic registration will remain an isolated island benefitting those who have managed to register. Some observers see structural progress and refer to the Milestone Process where the Cambodian government has explicitly agreed to tackle human rights including a concrete timeline for action. On the other hand, discussions with NGOs and press reports suggest that 2011 has seen the hitherto highest number of forced evictions and of economic land concessions – this is not in line with the commitments entered into in the context of the Milestone Process. This indicates that the government has not yet had the will or the capacity to take its human rights obligations seriously and to protect land and housing rights. Nor is the May 2012 announcement by the Prime Minister to stop all economic land concessions able to indicate serious change. The moratorium is already relativized by the government itself, and the allocation of ELCs continues. Furthermore, protests against the land policy are answered by state officials with threats against those protesting, arbitrary arrests and detention after summary trials. These reactions undermine trust in the commitment of the government of Cambodia towards effective protection of human rights in the land sector and thus endanger sustainability.

### Main Recommendations

#### Political level

- If evaluated positively in the August 2012 mission, the Milestone Process tying Cambodian-German cooperation to specific and time-bound commitments and targets in the area of human rights should be continued; the human rights aspects of

the Milestone Process should be further highlighted through specific indicators.

- Donors should intensify political dialogue with other key government actors in the land sector, i.e. the Ministry of Agriculture, Fisheries and Forestry, the Ministry for Rural Development, and the Ministry of the Interior. Such a dialogue should center on the international obligations and national commitments for the respect and protection of land rights.
- A permanent monitoring system on forced evictions, ELCs and case load with respect to land conflicts – accessible to donors, NGOs and the government – should be developed. An alternative might be to expand existing international systems, such as the Landmatrix (<http://landportal.info/landmatrix>) and apply them to Cambodia or to scale-up and streamline existing NGO monitoring approaches (by NGO Forum, LICADHO, Adhoc).
- Consultation with and participation of stakeholders, such as NGOs in Germany and Cambodia, should become a regular feature.
- Given the low governance level in the land sector, cooperation needs to focus on capacity development and technical support. No financial support should be provided if not coupled with technical cooperation measures. The human rights and general low governance situation do not appear to allow sector budget support for the time being. If sector budget support is provided to enable scaling-up, it needs to contain human rights triggers with teeth and be regularly and transparently monitored.

#### Technical level

To increase long-term relevance:

- Specific concepts need to be developed for areas with conflicting claims and for informal settlements where proof of ownership and other rights to land is particularly difficult.

To enhance effectiveness:

- The human rights situation in informal urban settlements, including Phnom Penh, needs to be addressed as a matter of urgency.
- An assessment of vulnerability including geographic and socio-economic factors should be carried out



and used to formulate a strategy of how to reach the program's target groups more effectively.

- The piloting of social land concessions combined with livelihood support should be continued to effectively and sustainably address poverty and exclusion of vulnerable groups.

To enhance the human rights-based approach:

- Systematically include human rights principles (transparency, accountability, participation and non-discrimination) as central aspects into the LRP program framework.
- Support the development and publication of criteria for the selection of provinces, districts and communes for systematic registration.
- Support the development and publication of predictable and transparent criteria for dispute resolution.
- Support MLMUPC to act with more transparency and accountability and to revise the discriminatory nature of fees for sporadic registration.

- Utilize and propagate the use of human rights guidelines (on forced evictions, the right to food, responsible governance of land) as guides for implementation of human rights obligations.

- Develop a gender-specific indicator or, alternatively, disaggregate all indicators on gender.

- Proactively and regularly communicate to NGOs and other stakeholders what the program is doing and not doing, and what it is achieving and what it cannot achieve.

- Increase cooperation with other duty bearers, i.e. ministries that are key actors in the land sector, including the Ministry of Agriculture, Forestry and Fisheries, the Ministry for Rural Development, the Ministry for Infrastructure, Industry and Mining and the Ministry for the Interior.

- Work with partners to establish an accessible mechanism for grievances occurring in the implementation of the program, e.g. through respective boxes in the communes.

# 1 Introduction

## 1.1 Objective of the assessment

The objective of the mission is to undertake an independent assessment of human rights issues related to the German-Cambodian Land Rights Program (LRP) in order to gain insights which can be used for management decisions by the BMZ as well as for a possible next phase of the LRP (03/2013- 02/2016).

## 1.2 Assessment focus and key issues

The object of the assessment is the Land Rights Program (LRP) commissioned by the BMZ in 2011 (see Annex 7.6) and implemented by GIZ since then – the assessment was neither tasked to evaluate the impact of German predecessor programs<sup>1</sup> in the land sector nor to undertake a legal assessment of LRP's sphere of influence and thus does not do so (see Terms of Reference for this assessment in Annex 7.1).

The Cambodian "Land Administration, Management and Distribution Program (LAMDP) has been supported by Germany since 2002 through a development program called "Support to the Cambodian Land Sector Program". Since 2011, the objective of this development program has been: "Poor rural and urban strata of the population are enabled to better realize their human rights to food and habitation" (in German: Das Ziel des EZ-Programms lautet: Die arme ländliche und städtische Bevölkerung, insbesondere Frauen, kann ihre Menschenrechte auf Nahrung und auf Wohnung besser verwirklichen). This program is currently implemented by GIZ through the "Land Rights Program" (LRP) (3/2011-2/2016) (PN: 2009.2169.2). The Land Rights Program was commissioned in 2011 and its objective

is: "The proportion of Cambodians having legally secure access to land is socially balanced and has risen within the framework of a comprehensive spatial planning concept".

The assessment uses the five OECD/DAC evaluation criteria (relevance, effectiveness, efficiency, impact and sustainability). However, due to the task being an assessment rather than an evaluation, **the focus will be on relevance and effectiveness of the LRP, reviewed from a human rights point of view** (see Box 5 and Box 8). This includes an analysis of human rights issues and their incorporation in the legal framework, the contribution of the program to the progressive realization of human rights as well as unintended positive/negative effects of the program regarding human rights and recommendations for a possible next phase of the Land Rights Program from a human rights perspective. The recommendations take into account that Germany's support of the Land Sector is an integral part of a coordinated support of various Development Partners (currently Finland, Canada and prospectively the EU) in partnership with the Cambodian government.

## 1.3 Human Rights Framework for the Assessment

The human rights treaties ratified by the German and the Cambodian governments (see Box 1) are the key reference framework for the assessment. Ratification implies the obligation to respect, protect and fulfill human rights.

<sup>1</sup> Those were the "Unterstützung des Aufbaus des Katasterwesens" (PN 2003.2250.3) and "Landallokation für soziale und ökonomische Entwicklung" (PN 2005.2176.5).

- The obligation to respect requires that states refrain from directly or indirectly interfering with the enjoyment of human rights.
- The obligation to protect means that states must prevent third parties (e.g. individuals or companies) from interfering, directly or indirectly, with the enjoyment of human rights.
- The obligation to fulfill obliges states to adopt legislative, administrative, budgetary, judicial and other necessary measures to achieve the full realization of human rights.
- do contribute to the protection and fulfillment of human rights by supporting duty-bearers to fulfill their human rights obligations and right-holders to claim their human rights.

A human rights-based approach implies the use of human rights standards and principles in planning, programming, implementation and monitoring of development cooperation. It requires that measures of development cooperation

- do not contribute to the violation of human rights<sup>2</sup> and

The most relevant human rights standards for this assessment in the land sector are the rights to housing and food (Art. 11.1, International Covenant on Economic Social and Cultural Rights (ICESCR)),<sup>3</sup> as interpreted in the respective General Comments and the Concluding Observations by the ICESCR-Committee (see Box 2). In addition, guidelines developed by the Special Rapporteurs (e.g. on forced evictions), and FAO Voluntary Guidelines (Right to Food, Responsible Governance of Tenure of Land) are used where relevant for the LRP.

Cross-cutting human rights principles, i.e. non-discrimination and inclusion of vulnerable groups, participation and empowerment, as well as transparency and accountability, complement the human rights framework and **are used to assess the processes LRP has supported in the land sector.**

#### Box 1: International human rights treaties ratified by Germany<sup>4</sup> and the Kingdom of Cambodia

- International Covenant on Civil and Political Rights (ICCPR), including the right to an effective remedy (art. 2 (3))
- International Covenant on Economic Social and Cultural Rights (ICESCR), including the right to housing and protection from forced evictions (art. 11.1), the right to food (art. 11.1), the right to earn one's living (art. 6)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CRC)

<sup>2</sup> While already implicit in binding human rights laws such as the ICESCR and the CRC, the non-binding "Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights" clarify the human rights obligations of states to respect, protect and fulfill beyond their borders. Published by international law experts in 2011, the Maastricht Principles can be used to ascertain international law in case of lacunae (according to Art. 38 (1d) ICJ Statute).

<sup>3</sup> Related to the rights to housing and food is the right to privacy (Art. 17 ICCPR). On a more procedural level the right to information (Art. 19.2 ICCPR), non-discrimination (Art. 2.2 ICESCR and Art. 2.1 ICCPR) and the right to an effective remedy in case of rights violations (Art. 2.3 ICCPR) are important rights.

<sup>4</sup> Germany has ratified additional human rights treaties.

### Box 2: Key human rights in the land sector: Housing, food and work

Article 11.1 (ICESCR) provides for the right to housing and is the key standard for the land sector. The article is specified in ICESCR-General Comments 4 and 7: The right entails that all persons should possess a **degree of security of tenure** which guarantees **legal protection against forced eviction** from their home. Forced evictions are defined as the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.

To be compatible with human rights, evictions must be based on law and be conducted according to the law. In all matters affecting their security of tenure, **people have a right to be duly informed and consulted**, to adequate compensation, and to **access an effective legal remedy**. Legal aid should be provided, where possible, to enable access to legal remedy for those in need.

The right to food and the right to work are key livelihood rights laid down in ICESCR Art.11.1 and Art.6. The respective General Comments 12 and 18 specify the core content of these rights: i.e. the state is obliged to **protect and promote the productive capabilities of people to provide food and an income for themselves**. These livelihood rights include agricultural land if it provides the main or only source of food or income for households.

Apart from the General Comments, a number of guidelines help to operationalize human rights obligations, such as the Basic Principles and Guidelines on Development-based Evictions and Displacements developed by the Special Rapporteur on Adequate Housing in 2008, the FAO Voluntary Guidelines on the Right to Food and the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security<sup>5</sup>.

With respect to the rights to housing and food, the ICESCR-Committee reviewed Cambodia's State Report and parallel reports submitted by NGOs, and engaged with Cambodia in an intensive dialogue.<sup>6</sup> Based on this, the Committee recommended in 2009 that Cambodia (see Annex 7.4 for an excerpt of the most relevant recommendations):

- review its policy regarding the conversion of protected zones into economic concessions;
- implement the 2001 Land Law without further delay and to ensure that its policies on registration of communal lands do not contravene the spirit of this law;
- strengthen its strategic interventions in response to the alarming situation of increasing food insecurity;
- adopt as a matter of priority a National Housing Policy that would upgrade poor urban settlements and ensure security of tenure;
- implement a moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed;
- undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects;
- take all necessary measures to combat the culture of violence and impunity, and for the protection of human rights defenders;
- foster transparency and accountability to improve effectiveness in the implementation of development programs funded by international donors.

## 1.4 Process and methodology

The assessment was carried out from 4 to 19 June 2012 in Cambodia. It was preceded and followed by a desk review of pertinent documents. The human rights mission to Cambodia partly overlapped with the Joint

<sup>5</sup> [http://www.fao.org/fileadmin/user\\_upload/newsroom/docs/VG\\_en\\_Final\\_March\\_2012.pdf](http://www.fao.org/fileadmin/user_upload/newsroom/docs/VG_en_Final_March_2012.pdf)

<sup>6</sup> For the summary of the dialogue with the State Party, represented by the Cambodian delegation in Geneva, see Summary Records, CESCR-Cambodia. [http://www.bayefsky.com/summary/cambodia\\_e\\_c12\\_2009\\_sr12.pdf](http://www.bayefsky.com/summary/cambodia_e_c12_2009_sr12.pdf) and [http://www.bayefsky.com/summary/cambodia\\_e\\_c12\\_2009\\_sr13.pdf](http://www.bayefsky.com/summary/cambodia_e_c12_2009_sr13.pdf)

Supervision Mission (JSM) of the Land Administration Sub Sector Program (LASSP) jointly carried out with the three development partners Germany (through GIZ), Finland (Ministry of Foreign Affairs) and Canada (CIDA). The mission also overlapped with a Program Progress Review (PPR) for LRP conducted by GIZ contracted consultants.

Most meetings took place in Phnom Penh, but the mission included a visit to the cadastral office and a public consultation on land mapping in Svey Rieng, visits to informal settlements in Battambang and Phnom Penh, and visits to indigenous communities in Ratankiri (see Annex 7.2 for mission schedule).

The assessment used the following methods: document review, key informant interviews and self-assessments, focus group discussions, and the review of available statistical data. Findings were triangulated as far as possible.

### 1.5 Focus of the assessment: The Land Rights Program since 2011

The object of this assessment is the Land Rights Program (LRP) implemented by the Ministry for Land Management, Urban Planning and Construction (MLMUPC). It is an integral part of the overall "Land Administration, Management, and Distribution Pro-

gram" steered by the same ministry. LRP is supported by German TC and implemented by GIZ; it began in March 2011. It is the successor of the program "Support for Development of the Cadastral System (Land Management)" (from 08/2002 to 02/2011) - the intended or unintended outcomes or impacts of this latter program are not being reviewed in this assessment.

The program "Support for Development of the Cadastral System (Land Management)" was repeatedly criticized by NGOs and the UN Committee on Economic, Social and Cultural Rights (see Annex 7.4). An NGO Parallel Report to the ICESCR argued that the program "denied due process rights to vulnerable households and communities and further weakened their tenure status"; that Germany contributed "to an inherently discriminatory program" and thus "has entrenched and legitimized systematic inequality in the Cambodian land sector and thereby breached its extra-territorial obligations to respect and protect the human rights to food and housing." The NGOs demanded a thorough impact evaluation of German support to the land sector.<sup>7</sup>

The new Land Rights Program is substantially different from the predecessor program: The program framework has taken up recommendations towards better human rights orientation and increased its focus on vulnerable groups.

#### Box 3: Summary comparison between the program frameworks of the "Support for Development of the Cadastral System (Land Management)" and the Land Rights Program

	Support for Development of the Cadastral System (Land Management) (2002-2/2011)	Land Rights Program (since 03/2011)
Objective	Households with legal claims to land hold legally secure titles. (overall objective for the program)	The proportion of Cambodians having legally secure access to land is socially balanced and has risen within the framework of a comprehensive spatial planning concept. (overall objective for the program)
Target group	All Cambodian citizens who have ownership, possession or user rights to land.	Focus on: poor population in rural and urban areas: i.e. the landless and land-poor, those in informal settlements, women and indigenous communities.

## 1.6 Challenges and limitations

While overall the mission was characterized by a spirit of good cooperation and openness of all those interviewed, there were three challenges for the assessment.

Data on the developments in the land sector are scarce and often contradictory. Official data on the number/size of economic land concessions, number of eviction orders, number of land disputes and cases in court are lacking or contradictory.<sup>8</sup> While very valuable, NGOs' documentation is not a substitute for official statistics and the states' obligation to monitor developments in the land sector.

- The time period of two weeks for the mission necessitated concentration on key aspects; a longer mis-

sion would no doubt give in-depth insights into the human rights situation in the land sector, and allow for more nuanced recommendations. In particular, a longer mission would have been beneficial for an in-depth analysis of LRP activities, the capacities of different governmental actors, and the impact monitoring system of MLMUPC. It would also have allowed more thorough collection and assessment of existing data.

- While the overlap with other missions economized the time for Cambodian partners and Cambodian NGOs, they may have had difficulties understanding the different purposes of the different and yet simultaneous missions; the coincidence of the independent human rights assessment with a PPR conducted by GIZ staff proved particularly challenging.

<sup>8</sup> There are different data: ADHOC counts 225 ELCs to have been granted by MoFF until the end of 2011; LICADHO counts 227 and MoFF lists 118. NGO Forum: 282 land disputes pending in 2010 and 284 in 2011 (counting only those with 5 or more households). In his September 2012 report, the Special Rapporteur on the Situation of Human Rights in Cambodia has compiled some numbers; the report, however, came out after research for this mission was completed.



## 2

# The land sector: History, legislation and current problems

Codification and systematic registration of land rights was introduced by the French colonial rule towards the end of the 19<sup>th</sup> century and continued by the Cambodian government after independence in 1953. The Khmer Rouge Regime (1975 to 1979) brutally evicted towns, abolished private property and destroyed the existing cadastral system.

After the end of the Khmer Rouge Regime, a transitional Land Law was issued in 1992. It aimed to protect immovable property and regulated possession but not ownership. Some households still hold certificates of possession or documents certifying application for registration.

In 2001, the Government adopted a new Land Law, providing for systematic registration of all land rights in a cadaster<sup>9</sup>. However, the law started an entirely new system of land ownership and registration: 1998 was set as the cut-off date for property rights with the consequence that all potential pre-1998 claims were to be annulled (the "clean-slate approach")<sup>10</sup>. The only exceptions to the "clean-slate approach" were the certificates of possession acquired in the transitional period. According to art. 29 of the Land Law, they can serve as a basis for vested ownership rights under the 2001 Land Law. In contrast, a former application for registration issued under the transitional law of 1992 is of no legal consequence. However, the request for registration can be used as documentary evidence under the 2001 law in the context of "sporadic registra-

tion"<sup>11</sup> if the provided documents legitimize the claim for ownership.

The "clean-slate approach" adopted by the Land Law of 2001 did not take into consideration traditional or informal/transitional rights of land ownership in Cambodia. But these had already lost legal relevance with the introduction of codified land law and systematic registration under the French colonial rule in the 19<sup>th</sup> century. In fact one of the positive aspects of the 2001 Land law is that it formally recognizes the possibility of collective land ownership for indigenous communities and thereby takes account of their traditional rights<sup>12</sup>.

One of the major achievements in the land sector is the allocation of more than two million titles during the past ten years.<sup>13</sup> This is by far faster than comparative processes in other Southeast Asian countries.<sup>14</sup> But despite this success, the **majority of Cambodians, and especially socially disadvantaged groups, still do not enjoy secure land rights. Without secure land rights, they more easily fall victim to involuntary resettlements, often executed with force, and remain with no access to remedies.**

In addition, the generally weak governance structures in Cambodia also impinge on the land sector. Thus, **accountability structures are very weak:** state officials and private actors do not consistently value the rule of law, corruption can undermine

<sup>9</sup> Land Law 2001, Title VI, Art. 226 ss.

<sup>10</sup> Land Law 2001, Article 7: "Any regime of ownership of immovable property prior to 1979 shall not be recognized".

<sup>11</sup> Sporadic registration (regulated in art. 229 of the Land Law) is registration upon application. It is thus outside the process of systematic registration which aims to cover all areas of Cambodia.

<sup>12</sup> Land Law 2011, Art. 23 ss.

<sup>13</sup> By 7 June 2012, 2,165,692 titles have been registered, official figures of MLMUPC for JSM.

<sup>14</sup> Philippines: 790 titles after 4 years of registration; Laos 122,934 titles within 8 years.

access to an independent and fair judiciary, and thus the general population does not trust the legal system. The traditionally hierarchical social relations also inhibit accountability: all power is vested in the ruling class, and decisions by the ruling class are accepted rather than reviewed or challenged. Last

but not least, there are almost no crucial drivers of change within government or within society; and awareness of rights is limited to very small circles of political opposition and NGOs who work at considerable risk<sup>15</sup>.

<sup>15</sup> See e.g. the killing of human rights defender Chut Wutty on 26 April in Koh Kong province and the arrest of 13 women protesting against the situation in Boeung Kak: Cambodia Daily, 23 May 2012.

### 3

## German development cooperation with Cambodia in the land sector

German development cooperation has been active in the land sector since 1995, and is fully aligned with the stated strategies of the Cambodian government. The vision of the Royal Government of Cambodia in the land sector is “to administer, manage, use and distribute land in an equitable, transparent, efficient, and sustainable manner in order to contribute to achieving national goals of poverty alleviation, ensuring food security, natural resources and environmental protection, national defense and socio-economic development in the context of market economy”<sup>16</sup>.

Based on the National Strategic Development Plan (Update 2009– 2013), as well as the Royal Government’s Declaration on Land Policy which serves as a roadmap, the Royal Government designed the Cambodian “Land Administration, Management and Distribution Program (LAMDP)” in order to support the Land Reform Program for 2009– 2013. LAMDP consists of three Land Sub Sectors, namely:

- Land Administration Sub Sector Program (LASSP),
- Land Management Sub Sector Program (LMSSP), and
- Land Distribution Sub Sector Program (LDSSP).

LAMDP has been supported by Germany since 2002, through the “Support to the Cambodian Land Sector Program”. Its objective is: “Poor rural and urban strata of the population are enabled to better realize their human rights to food and habitation.”<sup>17</sup> The technical cooperation part of the “Support to the Cambodian Land Sector Program” is implemented by GIZ through the “Land Rights Program” (LRP) (PN: 2009.2169.2).

The LRP started in 2011 and is expected to run until 2016. The objective of the Land Rights Program is: “The proportion of Cambodians having legally secure access to land is socially balanced and has risen within the framework of a comprehensive spatial planning concept”.

LRP provides support to the three sub-sectors of LAMDP mentioned above. LRP activities focus on supporting LAMDP with

- technical and legal advice to improve and complete the legal and policy framework for the land sector,
- the introduction of new technologies and procedures to speed up systematic land registration under the 2001 Land Law,
- the establishment of mechanisms for out-of-court dispute resolution in case of land conflicts with respect to titled and untitled land,
- developing and piloting of new administrative guidelines to provide land rights to informal settlers in rural and urban areas,
- registration of land to indigenous communities and the development of feasible approaches for the distribution of state land to the landless,
- facilitation of improved dialogue between government and civil society stakeholders.

The lead cooperation partner on behalf of the Cambodian government is the Ministry of Land Management, Urban Planning and Construction (MLMUPC).

<sup>16</sup> National Strategic Development Plan 2009–2012, Vision 2030, para. 110.

<sup>17</sup> In German: Die arme ländliche und städtische Bevölkerung, insbesondere Frauen, kann ihre Menschenrechte auf Nahrung und auf Wohnung besser verwirklichen.

In reaction to the human rights and governance challenges in the land sector the Cambodian and German Governments agreed during their last governmental negotiations in December 2011 on a Milestone Process to be implemented from 2012 through 2015. 13 million Euro<sup>18</sup> for the "Support to

the Cambodian Land Sector Program" were made contingent on the successful outcome of the Milestone Process (see Box 4 below). A mission in August 2012 assessed progress on the milestones; however the results were not available at the time of finishing this report.

#### Box 4: The Milestone Process

Milestones until June 2012

- Land title production in Svay Rieng to have at least doubled during the five months from January 2012 to May 2012
- Elaboration of a concept for speeding up systematic land registration

Milestones 2013 to 2015, concepts and operational plans required by June 2012

- Elaboration of a concept for improvements on subsequent registration
- Elaboration of a concept for the avoidance of (temporary) exclusions from the registration process
- Elaboration of a strategy and plan for state land distribution for the landless and land-poor
- Elaboration of a concept regarding creation of the necessary policy and legal environment for making results of official land use planning

<sup>18</sup> Of these 13 million Euro, 4 Mio. Euro are for technical and 9 Mio. Euro for financial cooperation. About 6 Mio. Euro of these funds for financial cooperation had been originally earmarked for other areas of German-Cambodian development cooperation and were reprogrammed for the land sector, 7 Mio. Euro were new commitments.

# 4

## Assessment of the Land Rights Program from a Human Rights Perspective

### 4.1 Relevance

#### Box 5: Key questions on relevance of LRP

- a) What are the major human rights challenges in the Cambodian land sector and their causes?
- b) To what extent have human rights issues in the land sector been incorporated in the relevant laws and regulations?
- c) To what extent have laws and regulations that incorporate human rights issues in the land sector been recognized and implemented by the Cambodian counterparts?
- d) To what extent has the program incorporated existing human rights and gender analysis or conducted such analysis?
- e) Is the program still focusing on the right priorities considering tensions over the human rights situation in the land sector?
- f) Within its envisaged orientation how can the LRP consider human rights standards and principles in a more systematic manner?
- g) Which other human rights issues are of relevance for the Cambodian Land Sector Program and should be raised in the policy dialogue with the Cambodian Government?

#### a) What are the major human rights challenges in the Cambodian land sector and their causes?

The major problems in the Cambodian land sector have been briefly outlined above (see chapter 2). **Greed and corruption are the key root cause for the recurrent human rights violations in the land sector:** the money extorted in this fashion is a tool to access and maintain power in the system of patronage which dominates the Cambodian political economy. For example: at least six oligarchs who are involved in land grabbing are members of Parliament and as such benefit

from legal immunity<sup>19</sup>; others enjoy factual immunity since courts lack independence. Hence, very few are held accountable, and power remains firmly in the hands of the ruling class. Thus, the government carries out and tolerates involuntary resettlements of people without land titles in both urban and rural areas; and these are often conducted by force and without adequate compensation. Criticism by the UN Human Rights Council and other UN human rights mechanisms,<sup>20</sup> donor governments, national,<sup>21</sup> German and international NGOs<sup>22</sup>, the World Bank<sup>23</sup> and international media have not convinced the government to

<sup>19</sup> GIGA, Kambodscha, Politökonomische Kurzanalyse as corroborated in discussions with UN, ILO, development partners and NGOs during the mission.

<sup>20</sup> Concluding Observations, ICESCR, 2009, see Annex 7.4.

<sup>21</sup> Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Five Shooting Incidents at Land Dispute Protests in the Past Two Months Show Alarming Increase in Use of Lethal Force, Press release, 26 January 2012

<sup>22</sup> FIAN et al, Extraterritorial State Obligations. 2011

<sup>23</sup> World Bank, Report No. 58016-KH, Inspection Report. Cambodia, Land Management and Administration Project (Credit No. 3650-KH) of 23 November 2010

stop the practice. Population groups and human rights defenders who challenge the government on its policies and actions are under risk of harassment, repression, and violence.

Under these conditions, the main questions for engagement are: Firstly, how can donors tackle the root causes for the recurrent human rights violations? Secondly, how can donors make meaningful contributions to human rights promotion and protection? And thirdly, relating to impact, how can donors prevent stabilizing and exacerbating the unequal power relations in the sector, thus avoiding silent complicity<sup>24</sup> with human rights violations or breaches of extraterritorial obligations? These questions are fundamental for the design of cooperation with semi-authoritarian, authoritarian and badly governed states and should be reflected continuously with all stakeholders.

In addition to the human rights problems in the land sector described above, there are a number of challenges to the implementation of the human rights to housing and to food:

- There is no overall plan on land use for development. Important parts of the land sector lack clear strategies and implementation guidelines which take adequate account of the rights of landless and land-poor groups, and of women, indigenous groups and informal settlers. For example, a national strategy for land distribution is still lacking; the adoption of the Draft Housing Policy seems currently blocked by struggles between ministries. The June 2012 announcement by the Prime Minister, "to allot 10,000s of hectares of land within existing forest and economic concessions and on public forest land",<sup>25</sup> reflects the current lack of strategy since beneficiaries and selection criteria are not clear, and observers point to the upcoming elections as being the prime motivation behind this move.<sup>26</sup> However, the initiative heavily affects the systematic registration process, since the staff usually doing systematic registra-

tion are instead out to register according to the Prime Minister's initiative.

- Since the reintroduction of private ownership of land, the number of landless and land-poor households has risen and will continue to rise due to the lack of a transparent, poverty-oriented mechanism for the distribution of state-owned land.
- People are not adequately informed about land rights and as a result are not able to claim their rights. Procedures for resolving land disputes are lengthy and often place socially weaker groups at a disadvantage.
- The criteria used to select the order of provinces/districts or communes for systematic registration are not clearly defined by law and thus seem arbitrary.
- Registration is delayed in areas where contesting claims are very likely and in informal settlements where proof of ownership is difficult. The registration system and its mechanisms are difficult to apply in these situations and areas; specific solutions, including mediation and conflict resolution, are needed. Yet, the population in these areas is in particular need of protection. This holds particularly true if land is transferred as economic land concessions.

#### b) To what extent have human rights issues in the land sector been incorporated into the relevant laws and regulations?

The relevant laws were described above (see chapter 2). A detailed human rights analysis of all relevant laws and decisions affecting the land sector is beyond the scope of this assessment. But overall, all persons interviewed agreed that the 2001 Land Law as well as the other statutes, decrees and ministerial or inter-ministerial decisions (prakas) regulating the sector<sup>27</sup> are by and large implicitly in line with international human rights and rule of law standards<sup>28</sup>.

<sup>24</sup> On the concept of silent complicity, see <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/principle2.html> and Clapham/Jerbi 2001.

<sup>25</sup> Phnom Penh Post of 16 June 2012.

<sup>26</sup> FIAN et al, p. 9, 11.

<sup>27</sup> E.g. Law on Forestry, Sub-decree on Social Land Concessions; Sub-decree on Economic Land Concessions; Sub-decree on State Land Management; Sub-decree on the Organization and Functioning of the Cadastral Commissions; Sub-decree on Procedures of Registration of Land of Indigenous Communities.

<sup>28</sup> E.g. art. 43: Protection of private property.

Two governmental circulars are of particular relevance for the work of the LRP. They provide guidelines to find solutions for the regularization inhabitants of state land in rural areas (Circular 02) and for informal urban settlements (Circular 03).

The title of the 2007 Circular 02 (“Measures Against Illegal Holding of State Land”) indicates its main contents: it authorizes evictions. Human rights laws only permit evictions if those affected are duly informed and consulted, receive adequate compensation, and have access to an effective legal remedy (see above Box 2). The procedures and requirements for evictions provided for in Circular 02 do not meet these requirements. On a slightly more positive note, Circular 02 permits preferential treatment in the allocation of land for persons who have been evicted and thus been made landless<sup>29</sup>. It furthermore provides special protection of land inhabited by indigenous communities<sup>30</sup>.

The adoption of Circular 03 (on “Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas”) in 2010 has been supported by German development cooperation. The title indicates that those who fall within its scope have no legal claim for the land they are living on. However, in practice the Circular has provided entry points for solutions for informal urban settlements with participatory approaches (see Box 6). But procedures and terminology employed in Circular 03 allow for wide discretion and are therefore open to misuse by public authorities. Examining the track record of the authorities so far, this is a serious risk. The risk could be mitigated through the formulation of guidelines for the interpretation of Circular 03.

#### c) To what extent have laws and regulations that incorporate human rights issues in the land sector been recognized and implemented by the Cambodian counterparts?

The application of existing laws and regulation through Cambodian duty-bearers is highly uneven. This is partly due to lack of specialist training, partly to a lack of strict follow-up measures and monitoring, and thus ultimately due to the lack of accountable governance structures in the sector and the country at large.

However, there are notable exceptions (see Box 6) where officials at the municipality facilitated sustainable on-site solutions for informal settlements, on the basis of Circular 03.

#### d) To what extent has the program incorporated existing human rights and gender analysis or conducted such analysis?

Unlike the predecessor programs, the LRP program framework aims to make contributions to human rights, partly incorporating existing human rights analysis. National and international program staff are informed about human rights standards and principles and their importance for LRP. Program staff is aware of the importance of non-discrimination and the special consideration of vulnerable groups, in particular women, indigenous communities, those in informal settlements, and the landless or land-poor.

The program has carried out an in-depth gender analysis covering its three components. The gender analysis recommends a stronger focus on gender issues and the collection of disaggregated data. Its findings are a helpful basis for gender-oriented reprogramming (GIZ, Land Rights Program, Gender Analysis for the GIZ Land Rights Program in Cambodia, 2012). The program furthermore supported the development of a training manual on gender in systematic land registration to strengthen capacities of state officials involved in systematic land titling.

LRP has not undertaken a separate human rights analysis. It included a human rights expert on its PPR in June 2012 who was tasked with developing detailed recommendations for the next phase of the program. The recommendations were not yet available at the time of writing this report.

#### e) Is the program still focusing on the right priorities considering the tensions over the human rights situation in the land sector?

More than 2 million titles have been registered with the support of the LRP. All those interviewed confirm that registration of land provides protection against

<sup>29</sup> Art. 6 of Circular 02.

<sup>30</sup> Art. 6 (3) of Circular 02.

land grabbing and other forms of interference with property rights. This is expressed by different social groups: middle class title holders, title holders from the informal settlement at Boeung Kak Lake, small holders benefiting from social land concessions in Kratie, vested with a perspective of title<sup>31</sup>. All of them respond that with a registered title they feel safe. NGOs working in the sector confirm that persons holding a title obtain legal security. Given these practical effects of land registration, **support for land registration and titling remains relevant**. But at this stage, specific concepts and approaches need to be developed for areas with conflicting claims and informal settlements. These approaches should also include special mechanisms for mediation and conflict resolution, as well as specific capacity development for state officials and NGOs, and the dialogue among them.

The overall objectives of the LRP (see above, chapter 1.2) aim to contribute to safeguarding the right to housing and the right to food by securing land rights. The overall objective and the objectives for the three components focus on<sup>32</sup> and measure<sup>33</sup> gains for poor and vulnerable groups. The program thus considers those living in informal settlements, indigenous communities, the landless, and women as key target groups. Progress for informal settlements, indigenous communities, and the landless is measured through specific indicators. Since these groups are those most threatened by forced evictions, land grabbing and legal insecurity and have the least access to any remedies, **LRP's choice of target groups is relevant from a human rights point of view**. However, it has to be pointed out that progress in securing rights for these groups will inevitably be slow (as evidenced by the

eight years it took three indigenous communities to effect registration), precisely because they are powerless, live under vulnerable circumstances, and often live on land with a high economic value (see below, effectiveness).

LRP offers technical advice to government officials – the main duty-bearers – and encourages them to employ participatory approaches in the sector. Apart from participation and consultation, LRP does not specifically work on increasing the human rights awareness of government officials in the land sector. Given the situation in the sector, addressing government officials in their capacity as human rights duty bearers would be an essential element of a human rights-oriented program. Addressing them as duty bearers would include trainings and other forms of capacity **development** to enable them to formulate policies in line with human rights obligations and monitor their implementation.

LRP facilitates participatory processes between state officials, communities and NGOs in various regions to help reach progress on land rights. These processes currently focus on two issues; one is on achieving a form of tenure security for those in informal settlements, such as in Battambang<sup>34</sup>; the other focus is to jointly work towards land registration for indigenous communities, such as in Ratanakiri<sup>35</sup>. Given that many of the human rights challenges in the land sector stem from lack of capacity but also from the unwillingness of parts of the government to adequately inform the population and to consult with them and their representatives, **the program activities in this respect are very relevant and can serve as good practice**.

31 After five years of certified tenure: Sub-decree on Social Land Concessions.

32 Component 1: The procedures for the distribution of land titles, especially to socially disadvantaged groups, are improved (land administration). Component 2: The poor Cambodian population, especially women, indigenous communities and informal settlers, are considered in the development and pilot implementation of appropriate framework conditions for a socio-economically and regionally balanced spatial planning and land use planning (land management). Component 3: Socially disadvantaged groups within society are considered more strongly in the distribution of state land (land distribution).

33 Indicators for Component 1: "With the goal of strengthening the human right to food a manual is developed for the implementation of Circular 02 for the regularization of informal rural settlers.", "The number of indigenous communities, that receive land title rises from 0 (2010) to 9." Indicators for Component 2: "With a focus on strengthening the human right to housing a handbook for the implementation of Circular 03 on the protection of informal settlers has been developed", "Land rights of individual households are identified following the legal procedures specified in Circular 03 in three urban settlements pilot sites." Indicators for Component 3: "The Cambodian government has developed a strategy and a plan for implementation of state land distribution to landless and land-poor groups in the population.", "In the framework of the pilot implementation of Circulars 02 and 03 on solutions for informal settlers, the adjustment of forest land boundaries and the development of partnerships with economic land concessionaires, approximately 1,000 households have received land.", "75 percent of formerly landless and land-poor households, who received land in the framework of the predecessor project LASED until the end of 2010, use at least half a hectare of their plots for agricultural production."

34 Community Managed Development Partners (CMDP); Community Empowerment and Development Team (CEDT); Cambodian Volunteers for Society (CVS).

35 Together with ILO the Program works with 13 NGOs in Ratanakiri.



### Box 6: Good practice: Support for informal settlers in Battambang

Since 2004, German Development Cooperation has provided advisory support to the municipality of Battambang, the second biggest town in Cambodia. Supported by development workers, 13 out of 64 informal settlements were identified. The program facilitated contacts between the municipality, the communities in the informal settlements and community-based NGOs. The objective was to jointly identify solutions including on-site upgrading and to achieve some form of tenure security for those living in the informal settlements mostly in poor living conditions below or at subsistence level. Circular 03<sup>36</sup> served as a helpful tool and eventually triggered the constructive involvement of the municipality. Five communities with altogether nearly 1,000 inhabitants were chosen as pilots and in November 2010, the municipality, the communities and the NGOs agreed upon on-site upgrading for the five pilots. For two of those communities, and therefore several hundred persons, housing resolutions<sup>37</sup> have meanwhile been agreed upon between the communities and the municipality; the communities thus have a perspective of secure tenure.

The processes have helped to empower the communities: They have undertaken further initiatives for the development of their communities, such as improvements of roads, access to water, youth development, etc. These are important steps to leave poverty. The governor of Battambang expresses that he has learned from the process and therefore sees that "eviction is not an option anymore."<sup>38</sup>

The work in Battambang is hitherto unique. Meanwhile UN Habitat and OHCHR have started additional small scale community-based development measures aligned with German support. The progress in Battambang has meanwhile attracted the interest of other municipalities, such as Sianhoukville and Phnom Penh.

#### f) Within its envisaged orientation how can the LRP consider human rights standards and principles in a more systematic manner?

The program needs to build upon its successes and to address its strategy and activities for poor and vulnerable target groups in a more stringent and systematic way; this includes a special focus on indigenous communities and on the situation of persons living in informal urban settlements in Phnom Penh where living standards are often particularly precarious. Overall, while the program framework focuses on vulnerable groups, **the actual activities for reaching its objectives appear to be divorced from a strategy and thus remain isolated measures** (see below, effectiveness). A thorough analysis of the target groups will enable LRP to systematically address non-discrimination and inclusion. This will also help to develop a strategy for how to support the rights to housing and adequate food for the most vulnerable groups, i.e. for those without

land and those holding only minimal plots below subsistence.

While several indicators for LRP components reflect human rights gains for poor and vulnerable groups, the indicators related to the development of handbooks on Circulars 2 and 3 are activity-based (see footnote 33). Revamping them into output or outcome indicators will increase the strategic value of those indicators for human rights gains.

Given the recommendations by the ICESCR Committee to Germany and to Cambodia (see Annex 7.4); LRP should increase its own transparency and its accountability – even though the Committee's recommendations were addressed to LRPs predecessors. Measures could include, for example, the publication of LRP's program framework and results and regular information sharing with national and international NGOs.<sup>39</sup> In its moves towards more transparency, the LRP should reflect that it is itself bound by human rights<sup>40</sup>

<sup>36</sup> Circular on the Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas of 31 May 2010.

<sup>37</sup> Housing resolutions are mutual obligations of the community and public authorities, with the aim to respect tenants' rights.

<sup>38</sup> In discussion with the PPR mission.<sup>39</sup> For World Bank experiences and recommendations, see World Bank 2011.

<sup>39</sup> For World Bank experiences and recommendations, see World Bank 2011.

<sup>40</sup> GIZ is a member of the UN Global Compact, and bound by its principles. MLMUPC, the main Cambodian counterpart and other Cambodian state partners, are bound by the human rights treaties Cambodia has ratified (see Box 1).

and, as far as the German contribution is concerned, by the human rights policy as formulated by the BMZ.<sup>41</sup>

g) Which other human rights issues are of relevance for the Cambodian Land Sector Program and should be raised in the policy dialogue with the Cambodian Government?

The scale of the human rights violations in the land sector in Cambodia require that the burning issues, such as forced evictions, threats for the rights and livelihood of indigenous communities by economic concessions, and threats to human rights defenders are regularly addressed at the political level.

The MLMUPC is the lead partner for LRP – **however, it has only a limited role in the sector:** Economic Land Concessions are mostly awarded by the Ministry for Agriculture, Forestry and Fisheries, but also by the Ministry for the Environment and by the Prime Minister; mining concessions also involve the Ministry of Industry, Mines and Energy. Decisions on relocation and evic-

tions in urban areas are under the responsibility of the Ministry of the Interior and under the authority of the respective governor. **These competing competencies do not appear to have been installed by mistake: they enable a "divide et impera" style of rule and facilitate ignorance of the systematic implementation of human rights obligations. This should therefore be a topic for policy dialogue.**

Through the Milestones Process the Government of Cambodia has committed itself to address three of the major human rights challenges in the sector: the problem of informal urban settlements, land rights of indigenous communities, and the situation of landless and land-poor. The commitment is coupled with concrete measures and a timeline. However, the milestones to be reached in 2012 lack a qualitative human rights perspective; they focus on quantity with respect to the speed of registration. While speed is important, since registration offers increased security against human rights violations, quality is likewise important. Therefore, policy dialogue with the government **should include issues of participation and transparency in the registration process**<sup>42</sup>.

**Box 7: Good practice: Successful registration of indigenous communities in Ratanakiri**

In Ratanakiri province, 60 percent of the population belong to the indigenous population. Most of them rely on agriculture for their subsistence and live on very valuable forest land which is of huge interest for economic investors. Art. 25 of the 2001 Land Law provides for the possibility to acquire collective ownership. The article also provides for a very complicated process, since three steps in three different ministries are required:

- Formal determination of indigenous identity through the Ministry of Rural Development<sup>43</sup>
- Formal registration as an indigenous community with the Ministry of the Interior
- Registration of collective ownership with the Ministry of Land

After the first two steps some form of legal security through interim protection can be granted upon application for the last challenging and lengthy step.

In the meantime, numerous incidents are reported when forest land was acquired through Economic Land Concessions in complete disregard of the rights of the indigenous communities living there. As of 2011, approximately 73,450 ha have been given away in Economic Land Concessions by the Ministry of Agriculture, Forestry and Fisheries, and 105,652 ha by the Ministry of Industry; Mines and Energy. This is more than 50 percent of the province.<sup>44</sup>

<sup>41</sup> See BMZ Strategy Paper 4/2011 Human Rights in German Development Policy and BMZ Strategy Paper 2/2012 Investment in Land and the Phenomenon of Land Grabbing.

<sup>42</sup> With a human rights-based approach in mind, the first milestone could be formulated as follows: "Land title production in Svay Rieng to have at least doubled during five months from Jan. to May 2012 and to have been carried out in a transparent way applying participatory methods (means of verification: satisfaction of population in Svay Rieng through interviews)." The second milestone could be formulated as "A concept for speeding up systematic land registration has been elaborated in a transparent and consultative process, including civil society organizations, representatives of indigenous stakeholders etc." (means of verification: interviews with civil society organizations, minutes of consultative meetings held).

<sup>43</sup> According to the "Draft Handbook for the Land Registration of Indigenous Communities" (as of 12 January 2012) identity is based on criteria such as background, socio-cultural or economic practices of the indigenous community, collective land management practices and willingness of community members. While these are in line with ILO Convention No. 169, the criteria have not been communicated transparently.

<sup>44</sup> Data by Adhoc, Report on Land and Housing Rights 2011.

In this difficult and conflictive context, GIZ-LRP, ILO and NGOs have successfully cooperated to support indigenous communities to realize their rights to housing and adequate food. The cooperation between an inter-governmental organization, development cooperation, NGOs and the government, as well as the direct support to the rights holders of these various institutions are success factors.

Meanwhile, three communities have completed the registration process and acquired collective titles. Forty others have completed the first two stages of the process, which provides them with the right to apply for interim legal protection. Due to the complicated administrative structures and procedures the processes are very slow. Yet without the engagement of GIZ-LRP, ILO and the local NGOs the concerned indigenous communities would still be without any rights. Staff from GIZ-LRP, ILO and NGOs report that members of indigenous communities with collective titles feel safe against claims of potential investors.

The good cooperation between GIZ-LRP, ILO and NGOs will result in a handbook which can serve as a tool for communities and government officials alike to accelerate registration for indigenous communities. Assistance with land registration has been complemented by community-based livelihood support and legal empowerment by German Agro Action in cooperation with local NGOs. The work of the LRP in Ratanakiri is also welcomed by international NGOs.

## Conclusions

The program works to improve security of tenure, as a key component of improving the right to adequate food and the right to housing. It is addressing the most vulnerable groups in the land sector: women, indigenous communities, those in informal urban settlements, and the landless and land-poor. Therefore the program has the correct focus from a human rights perspective. But the program needs to find solutions for systematic registration in conflictive areas and areas where formal proof of ownership of rights is not available. To increase relevance, the program should formulate a clear and explicit human-rights based strategy. This would enable LRP to address government officials as duty bearers, and

mainstream all human rights principles in its advisory activities. It would also allow LRP to increase its own transparency. To support LRP's relevance, policy dialogue should regularly address human rights violations committed or condoned by the Cambodian government, the lack of coordination at government level, and work for the inclusion of qualitative human rights aspects in the Milestone Process.

## 4.2 Effectiveness

LRP is effective if substantial progress towards the human rights objective and its target groups can be identified. Box 8 details the questions assessed:

### Box 8: Key questions on effectiveness of LRP

- a) To what extent thus far has the LRP achieved or is likely to achieve its objectives and indicators (as laid down in the Implementation Agreement for the current phase 1/2011 until 2/2013), regarding those dimensions with special relevance to human rights?
- b) Which areas – from a human rights perspective – may need more attention or have the potential for greater scope?
- c) Is it necessary to further emphasize certain human rights aspects and if so how should this be done?
- d) To what extent thus far has the LRP reached its target groups among the right-holders, in particular women? What mechanisms are in place to secure inclusion of the most vulnerable among the right holders?
- e) Which right holders may need more attention as target groups, from a human rights perspective?
- f) What are the major factors influencing the achievement or non-achievement of the objectives and reaching/not-reaching the target groups?
- g) What mechanisms has the program established to secure stakeholder engagement (including organized civil society) and participation by the different parts of its target group?
- h) How does LRP address capacity gaps (and/or lack of political will) of duty-bearers with respect to transparency and accountability? How effective is it in doing so?

- i) What mechanisms has the program established to ensure transparency and accountability about its own activities and sphere of influence?
- j) To what extent is the human rights-based approach used in the program's impact monitoring system?

a) To what extent thus far has the LRP achieved or is likely to achieve its objectives and indicators (as laid down in the Implementation Agreement for the current phase 1/2011 until 2/2013), regarding those dimensions with special relevance to human rights?

LRP and its predecessor have altogether supported the granting of 2,165,692 titles until June 2012. From March 2011 (the beginning of this program) until the end of May 2012 approximately 800.000 titles have been awarded.

Research by the Canadian International Development Agency (CIDA)<sup>45</sup> shows that **women have benefitted most from the 2001 Land Law**. This is confirmed by government surveys on titling: 60 percent of those with land titles are women: 1/3 of these are individual titles, and 2/3 of the titles women hold jointly with their husbands. Women with joint titles will need to transfer the title to their name in case of widowhood, divorce or separation. Interviews carried out by CIDA have revealed that women perceive this situation as difficult, but in their view the problems are not so much rooted in the Land Law as much as in the difficulty to obtain personal status certificates and documentation about widowhood, separation and divorce.

Overall, the program contributes to fulfillment of the human rights to housing and adequate food, **but there is not sufficient progress to achieve effective human rights protection for the large number of vulnerable groups**.

**Progress on registration of collective land rights for indigenous communities is slow.** The program aims for registration of land rights of at least nine communities until February 2013, and has so far achieved the registration of three communities. It took the communities eight years to get a title. Given this, it is not certain that any of those 40 communities who have meanwhile completed the first two steps of registration will be able to have their land registrations until the end of LRP's current phase.

The program is behind its objectives with regard to human rights for informal urban settlers and for the landless and land-poor in rural areas:

Drafting of the planned handbook for the implementation of Circular 03 for the protection of **informal urban settlements** has not yet started. The program is meant to pilot the implementation of Circular 03 in at least three urban settlements, one of them in Phnom Penh. But a pilot area for Phnom Penh could not yet be identified and the implementation process is currently limited to four informal settlements in Battambang.

Access to land rights and the right to adequate food for **landless and land-poor** is also behind schedule. One important reason for the delay is that the government has not identified sufficient land for social land concessions. The planned strategy for the implementation of state land distribution to landless and land-poor is part of the Milestone Process. The program has the target that by February 2013 at least 1.000 household will have been allocated land with some form of formal contractual or registered rights. To this point, none of those who have received land in the implementation of Circular 03 or as a social land concession have acquired any formal status. The program has the objective that until February 2013 75 percent of those who have received land in one of the three pilots where social land concessions are accompanied by livelihood support (LASED, carried out in Kratie, Kp. Thom and Kp. Cham) should use it for agriculture. According to program surveys, on average 60 percent of households who have received land are using at least half a hectare for agricultural production and thereby realize their right to an adequate standard of living. Hence, the indicator is not yet reached. But there is the perspective that the target of 75 percent can be reached until the end of the current phase in February 2013: Most social land concessions procedures only have begun recently; hence land has started to be allocated in 2010 or even later. But in the pilot villages (e.g. Sambak village in Kratie) where the social land concession process had already started in 2004 and land has been used since

<sup>45</sup> LMAP-Canada of April 2010, Annex 10 to Gender Analysis for the GIZ Land Rights Program Cambodia, 2012.

2008, 80 percent of those who have been granted land are using it for agricultural purposes.

**b) Which areas – from a human rights perspective – may need more attention or have the potential for greater scope?**

There is no overview on vulnerability and how it is spread in different regions in Cambodia; therefore, there is no spatial information with respect to vulnerability in terms of land rights.

But information from the on-site visits, interviews and document reviews agree that indigenous communities in remote areas, and those in informal urban settlements, above all those in Phnom Penh, are the most vulnerable and would thus need more and more systematic attention in the future. To illustrate this with numbers: According to Adhoc, among the 127 communities evicted or relocated until 2011, 81 communities were in Phnom Penh city, affecting 30,009 families, who roughly constitute a little under 10 percent of Phnom Penh's population in 2010.<sup>46</sup>

Another group who is extremely vulnerable is comprised of landless rural households and individuals. They cannot realize their right to an adequate standard of living, including food. Acquiring land could improve their livelihoods provided they have the means and capacities to use it for agriculture. Progress on social land concessions is slow; so far the National Committee for Social Land Concessions has allocated land to only 2,108 families of former militants<sup>47</sup>. The pilots of the program in Kratie, Kp. Thom and Kp. Cham are likewise progressing slowly. And it is unclear whether the landless will benefit from the June 2012 initiative by the Prime Minister to allot 10,000 land plots within existing forest and economic concessions and on public forest land.<sup>48</sup>

To sum up, while LRP's choice of the target group is relevant, the target groups will need to be addressed more systematically to increase effectiveness. Part of a more systematic approach may be to map vulnerability with respect to the right to housing and the right to adequate food.

**c) and h) Is it necessary to further emphasize certain human rights aspects and if so how should this be done? How does LRP address capacity gaps (and/or lack of political will) of duty-bearers with respect to transparency and accountability? How effective is it in doing so?**

MLMUPC officials are the main partner of LRP and increasingly work with participatory methods. But the duty bearers neither recognize nor implement accountability, transparency and non-discrimination as important ingredients for the successful implementation of the Land Law and subsequent legislation.

The process of systematic land registration contains a number of **participatory elements**: MLMUPC announces and informs about registration procedures in newsletters and brochures; it organizes information meetings at provincial, district and communal level. The registration procedure requires participation of the title applicant and others affected by the registration (e.g. owners of adjoining plots); maps are publicly displayed to facilitate this participation. Circular 3 includes provisions for participatory solutions for urban informal settlements, involving inhabitants, municipality and community-based NGOs.

Political concepts in the land sector are shared and discussed with NGOs at the drafting stage. But NGOs report that the consultation meetings are scheduled at very short notice (1–3 days) which make substantial contributions and thus meaningful discussions difficult. Moreover, the criteria for selection of NGOs to be invited are not clear.

Discussions with counterparts indicate that duty bearers do not usually endorse nor observe the human rights principle of **accountability** – to ensure predictability of state action, the observance of procedural standards and to prevent the abuse of power. This is confirmed by LRP program staff. Within its current orientation, LRP supports the joint missions with Finland and Canada, the two other development partners engaged in the sector. These Joint Supervision Missions require MLMUPC to report about progress. But while accountability to donors is important, much more needs to be done to increase the domestic accountability of MLMUPC and its development partners.

<sup>46</sup> Adhoc 2012, p. 6 using date of Sahnakum Teang Tnaut 2011. Using the same source, Adhoc predicts the eviction of further 606 communities, without further evidence, however, Adhoc 2012, p. 2, 6.

<sup>47</sup> Speech of H.E Im Chhun Lim, Minister of Land Management, Urban Planning, and Construction on 28 February 2012.

<sup>48</sup> Phnom Penh Post of 16 June 2012.

There is a lack of transparency in some areas of the program: Nobody interviewed in the MLMUPC has been able to provide information about the criteria for the selection of provinces, districts and communes for systematic registration. Similar concerns apply to dispute settlement: MLMUPC has established administrative and cadastral commissions to solve land disputes; yet the criteria upon which a decision of an administrative or cadastral commission is based remain unclear, most likely also for those state officials sitting in the commissions which renders decision-making more difficult if not arbitrary. This might contribute to the high number of unresolved cases<sup>49</sup> in the Cadastral Commissions<sup>50</sup> and at the same time further undermine trust in the existing dispute settlement mechanisms.

Naturally, LRP is neither able nor tasked to address the immense problem of arbitrary state action, and ultimately **discrimination**, in the land sector as a whole. Discrimination affects predominately areas which have not yet undergone systematic registration. In these areas, land is given away in Economic Land Concessions and other non-transparent transactions. MLMUPC is as yet neither capable nor willing to prevent these transactions, since Economic Land Concessions are authorized by the Ministry of Agriculture, Fisheries and Forestry, by the Ministry for the Environment, by the Ministry, for Industry, Mining and Energy or by the Prime Minister himself. LRP's sphere of influence does not reach to Ministries that are not development partners. Yet the giving away of land as ELCs shows that awareness on the relevance of non-discrimination and inclusion of vulnerable groups is not rooted among key actors of the Cambodian government.

Another example: MLMUPC imposes fees for sporadic registration. All those who apply for a title outside the process of systematic registration fall under the system of sporadic registration.<sup>51</sup> These transactions are fee-based, the precise amount of which is not clear since the Ministry of Finance has not yet issued a formal decision on it. Yet current proposals suggest a fee

of USD 575 per transaction regardless of the size and location of property; discussions suggest that this is also the amount which is currently paid for registration upon application outside the systematic process. These fees are discriminatory against those with small parcels and little income. They form a barrier against registration and the legal protection of land rights.

To address discrimination, identifying high-ranking human rights champions in government institutions will be an important contribution to start tackling the lack of sensitivity on human rights issues.

d) and e) To what extent thus far has the LRP reached its target groups among the rights-holders, in particular women? What mechanisms are in place to secure inclusion of the most vulnerable among the rights holders? Which rights holders may need more attention as target groups – from a human rights perspective?

The process of systematic registration and specific awareness-raising have already contributed to improving land rights for **women**: they gain legal certainty through formal registration. As mentioned above, statistics of MLMUPC and research by CIDA show that 60 percent of the titles already assigned are held by women. Progress for women is hampered in many areas, as evidenced by gender-based violence, traditional roles and stereotypes. Therefore gender issues require continuous attention.<sup>52</sup> But so far none of the indicators of the program is gender-specific.

The current program framework specifically targets registration of collective titles for **indigenous communities** and support for land rights of indigenous communities is progressing slowly, but too slowly for real progress. This is not LRP's fault but rather it is due to administrative hurdles and the clash of interests between powerful investors and the relatively powerless communities (see above, Box 7). Therefore, NGOs working with indigenous communities cannot trust the

49 9,000 cases as of 7 June 2012, data by MLMUPC. Data provided by GIZ differ: GIZ (2012), Sicherung der Landrechte in Kambodscha, p. 4.

50 Dealing with land disputes in areas that have not yet undergone registration; whereas the Administrative Commissions are competent to deal with disputes in the context of systematic registration.

51 Sporadic registration may occur if owners do not want to wait until systematic registration reaches their specific area but want to have immediate security or in situations of so-called subsequent registration, i.e. when ownership changes through sale, inheritance or divorce.

52 See NGO Working Group, Parallel report on Cambodia to CEDAW, 2009.



government's proclamation of an ELC moratorium in 2012. LRP will need to intensify measures of support for indigenous land rights, e.g. through cooperation with NGOs working on legal awareness and empowerment and NGOs focusing on livelihood support.

The program pilots social land concession in favor of the **landless and land-poor** in Kratie (with further pilots in Kpg. Thom and Kpg Cham). In 2004, LRP's predecessor initiated a process in which the municipality and the community cooperated to assign land to landless or land-poor families. The World Bank (through LASED) funded additional livelihood support. 80 percent of those who have been assigned plots are using them for subsistence, thus exercising part of their right to adequate food<sup>53</sup>. The livelihood support provided by LASED has led to comprehensive community-based development initiatives, including joint initiatives for schooling, mutual support, etc. All those involved agree that the additional livelihood support was key to the success of the social land concessions. Concerns on behalf of GIZ refer to the cost intensity of the livelihood support. The money is currently provided by the LASED-program of World Bank but LASED will be phased out in 2013. Provided future funding can be secured, the combined land and livelihood support for the landless and land-poor should be scaled-up.

Successful initiatives in Battambang supported by LRP (see Box 6) have provided an important starting point to improve the human rights to adequate food and housing of those living in **informal urban settlements**; Circular 3 has proved to be instrumental for this success, as was cooperation between duty-bearers and rights-holders. Yet, informal settlers in Phnom Penh, Siem Reap and Shianhoukville still do not have security of tenure. Hence, LRP needs to develop strategies for this part of its target group.

f) **What are the major factors influencing the achievement or non-achievement of the objectives and reaching/not-reaching the target groups?**

**Formal land registration within the systematic registration context** is progressing fast (in comparison to other Asian countries – see footnote 14) and hence

progress on tenure security as an important element of the LRP-objective can be achieved. Factors contributing to this success are that the system of systematic registration is fully functioning, implemented by well-trained technical staff with the necessary technical equipment. A further aspect is the formalism of Cambodian society: formal requirements and documentation are highly valued and accepted in Cambodia. This helped to make progress in developing and implementing technical and administrative procedures; yet such a purely formalistic and hierarchical approach at the same time prevents progress on accountability and the rule of law and hence for the sustainable protection of human rights. While in many areas of society, e.g. on the topic of gender-based violence, traditional roles and stereotypes continue to hamper progress for the situation of women, land rights for women have considerably improved. In this context again the formalism of the Cambodian society might play a role: registered land rights are formal rights, objectively and visibly documented in the land register. Formal rules and regulations have such a high appreciation that they might even trump traditional stereotypes.

Due to the complicated procedures for registration of **collective land rights of indigenous communities** (see above Box 7) and due to the high value of their land it is unlikely that LRP will reach its objectives related to this target group.

Aspects contributing to the slow progress in improving **land rights and the right to adequate food for the landless and land-poor in rural areas** are: the necessary administrative contributions by the municipalities are slow and community-based development measures such as the one designed to support the landless and land-poor in rural areas take time.

**Informal settlements** have not been a focus of LRP's predecessor programs. At this point, the "success story" of Battambang has shown entry points and possible avenues for other towns, like Siem Reap, Shianhoukville and Phnom Penh. But cooperation with the municipality of Phnom Penh on informal settlements is hitherto impossible, since the governor and his staff have not yet agreed to even have talks with GIZ. The reasons are unknown; but the governor of the Munic-

<sup>53</sup> Those who do not use the land assigned apparently prefer to stay in their old areas with family in well-known neighborhoods.

ipality of Phnom Penh has continued to refuse conversation with development partners. When eventually UN HABITAT conducted some talks they felt it was possible that the governor rejects any contact when he suspects that human rights could be raised.

**g) What mechanisms has the program established to secure stakeholder engagement (including organized civil society) and participation by the different parts of its target group?**

The program staff facilitates participatory processes and communicates to government actors that consultation with citizens is part and parcel of systematic land registration. The program seeks to strengthen dialogue between the government and local NGOs through its work with several of these organizations, above all in Battambang with those living in informal settlements<sup>54</sup> and in Ratanakiri with indigenous communities<sup>55</sup>. The program is furthermore looking for entry points to work with those living in informal settlements in Phnom Penh through implementation of Circular 03 which provides for NGO involvement. The contribution of development workers in their role as "bridge-builders" is essential since they are trusted by government actors and NGOs. A community-based approach – as applied by LRP in Kratie in its work with landless and land-poor – is characterized by consultation and participation of target groups.

**i) What mechanisms has the program established to ensure transparency and accountability about its own activities and sphere of influence?**

The program participates in the normal reporting requirements of German development cooperation: towards BMZ through annual reporting and towards GIZ through regular reporting (at least annually). Currently there is no institutionalized or regular exchange with national and international NGOs nor does the program proactively report to or inform the Cambodian public.

**j) To what extent is the human rights-based approach used in the programs impact monitoring system?**

The program does not maintain a separate impact monitoring system but is aligned to the reporting systems of MLMUPC; no information was available as to the content of this system. A form of regular impact monitoring is generated by the six-monthly Joint Supervision Mission of all development partners in the Land sector. The June 2012 Mission considered the right to housing and the right to adequate food, non-discrimination and accountability, but did not include any stakeholder discussion and hence did not use a participatory approach to monitoring.

## Conclusions

Overall, the program contributes to its objectives in terms of the rights to housing and to food, but there is not sufficient progress in the protection of these rights for the target groups. Significant progress has been achieved on land rights for women, but it is not captured by a specific indicator. For indigenous communities, the landless and land-poor, and those in informal settlements the program has had difficulties in achieving its objectives, as is evidenced by its lagging behind with respect to its indicators. Thus there is a lack of effectiveness.

## 4.3 Efficiency

**Does the program have sufficient resources (budget/time/staff capacity) to consistently address its human rights dimensions?**

LRP is a complex program in a very complex, deteriorating human rights situation. This has required staff to meticulously report back to headquarters and BMZ on current developments. This is an important tool to secure accountability of LRP towards the BMZ and the larger German public. However, to implement its objectives, the program needs more resources – to attain human rights objectives and to work with a

<sup>54</sup> Community Managed Development Partners (CMDP); Community Empowerment and Development Team (CEDT); Cambodian Volunteers for Society (CVS).

<sup>55</sup> Together with ILO the Program works with 13 NGOs in Ratanakiri.



human rights-based approach requires staff and time resources.

#### 4.4 Impact

The key questions on impact:

- a) To what extent have activities so far contributed to the progressive realization of human rights (including mechanisms for Cambodian citizens to safely claim rights, in particular poor and marginalized sections of the population)?
- b) What other effects with regard to human rights, unintended positive or negative, have been produced by the program's activities?

a) To what extent have activities so far contributed to the progressive realization of human rights (including mechanisms for Cambodian citizens to safely claim rights, in particular poor and marginalized sections of the population)?

There are some aspects that indicate human rights improvements:

- For those with titles land rights are sustainably protected. All those interviewed confirmed that wherever formal registration has been carried out land rights are secured.
- Autonomous land rights of women are formally granted and thereby safeguarded, but gender issues require continued attention.
- Through registration of collective land rights the precarious situation of indigenous communities and their rights to housing and living are better protected. According to interviews, formal registration protects against infringements.
- MLMUPC staff and those in subordinate units seem aware of the need for participation and apply participatory procedures in systematic land registration. Regulatory solutions for those in informal urban settlements (through Circular 03) include participatory approaches.

b) What other effects with regard to human rights, unintended positive or negative, have been produced by the program's activities?

The brevity of the mission did not allow identification of whether LRP had additional effects beyond its immediate activities. However, while the competency of MLMUP as LRP's main cooperation partner are largely limited to technical issues of land policy with registration at its core, **the question remains whether the LRP unintentionally has a stabilizing effect** on the political economy ruling the land sector,<sup>56</sup> which encourages land grabbing, forced evictions, and threats to human rights defenders. While difficult to prove or to disprove, this question should be reflected continuously with all stakeholders.

#### 4.5 Sustainability

Are there any risks for the sustainability of the program's results with regard to human rights issues? Are there any factors that could contribute to enhancing sustainability?

The highest risk to sustainability is political in nature, i.e. if arbitrary land transfers, forced evictions, and ELCs are not halted, the system of systematic registration will remain an isolated island benefitting those who have managed to register.

Some observers see structural progress and refer to the Milestone Process where the Cambodian government has explicitly agreed to tackle human rights including a concrete timeline for action. On the other hand, discussions with NGOs and press reports suggest that 2011 has seen the hitherto highest number of forced evictions and of economic land concessions – this is not in line with the commitments entered into in the context of the Milestone Process. This indicates that the government does not yet have the will or the capacity to take its human rights obligations seriously and to protect land and housing rights. Nor is the May 2012 announcement by the Prime Minister to stop all economic land concessions able to indicate serious change. The moratorium is already relativized by the government itself and the allocation of ELCs contin-

<sup>56</sup> For a discussion with respect to World Bank Support, see World Bank 2011, p. v, p. 14.

ues<sup>57</sup>. Furthermore, protests against the land policy are answered by state officials with threats against those protesting, arbitrary arrests and detention after summary trials<sup>58</sup>. These reactions undermine trust in the commitment of the government of Cambodia towards effective protection of human rights in the land sector and thus endanger sustainability.

Another risk relates to subsequent registration: If corruption remains endemic and efforts to anchor the rule of law in Cambodian structures are not successful there is a risk that the land registration system will not be able to meet future challenges, such as subsequent registration. In the worst case, after a generation the cadaster will not reflect the status of land rights any more, and thus legal insecurity, speculation with land, and land-grabbing may return.

<sup>57</sup> See "Land Concessions Signed After Hun Sen Ordered Moratorium", Cambodia Daily, 15 June 2012; PM defends ELC signings, Phnom Penh Post, 27 June 2012.

<sup>58</sup> See e.g. the case of 13 Female Boeung Kak Protesters, Cambodia Daily, 23 May 2012, and the killing of a 14-year old girl in Kratie during a forced eviction by government officials on 16 May, Phnom Penh Post 17 May 2012. See also the Press Statement by the UN Special Rapporteur on the situation of human rights in Cambodia, Professor Surya P. Subedi of 11 May 2012; see also the Report of the Special Rapporteur on the situation of human rights in Cambodia 2010, A/HRC/18/46; United Nations Human Rights Council, Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia the promotion and protection of human rights 2010, A/HRC/18/47.

# 5

## Conclusions

### 5.1 Strengths

The LRP is relevant: LRP's overall objective is to contribute to the right to housing and the right to food through improving tenure security in the process of systematic registration. The program is addressing the most vulnerable groups in the land sector: women, indigenous communities, those in informal urban settlements, and the landless and land-poor. Except for women the program contains specific indicators. Therefore the program has the right focus from a human rights perspective.

The program staff applies human rights principles: The program staff facilitates participatory processes in various areas and communicates to government actors the need for consultation of stakeholders. The program staff is aware of the importance of non-discrimination and the inclusion of vulnerable groups.

Systematic land registration contributes to legal certainty and is a good basis for structural improvements for land rights: By assisting in the establishment of a cadastral system and systematic registration of land the program has contributed to reform in the land sector, which is a basis for better human rights protection.

Successful approaches to address vulnerable groups have led to improvements of their human rights situation:

- The process of systematic registration and specific awareness-raising have contributed to improving land rights for women.
- Through registration of collective land rights the rights of indigenous communities are better protected.

- The program has successfully piloted social land concessions in favor of the landless and land-poor in Kratie.
- Through advice and support for the municipality in Battambang LRP has made advances to improve the right to housing for those living in informal settlements.

Technical cooperation through capacity development is an important instrument to address some aspects of weak governance in the land sector:

- Advisors' presence in MLMUPC facilitates the building of trust and professional exchange. Advisors are successful in supporting MLMUPC staff to adopt participatory approaches.
- Development workers have an important "bridge" function between the duty bearers at different levels of the government and representatives of rights-holders such as NGOs. The dialogue development workers facilitate is a necessary ingredient for improved human rights protection in the sector.
- The community-based approach in Battambang (for informal urban settlements) and in Kratie (for social concession for landless and land-poor) are examples for solutions that might be scaled-up to eventually achieve structural progress.

The Milestone Process demonstrates to the government of Cambodia the expectation that it needs to respect land rights and ensure their protection: Turning the concepts for the problems of landless and the hitherto unregistered informal urban settlements and forest land of indigenous communities into milestones has the potential to trigger substantial progress since the Cambodian government has committed itself to specific and time-bound action.

## 5.2 Weaknesses

ELCs and other transactions in areas which are not yet registered curtail LRP's possibilities and scope for intervention: ELC and other land transfers are often carried out in disregard of competing rights, legal standards and procedures. They constitute a fait accompli and curb LRP's scope of action. They also throw doubt on the political will of the Cambodian government to implement its human rights obligations.

Lack of reliable human rights information makes assessment of the situation and of progress difficult: The actual human rights situation in the land sector is unclear; this is despite many national and international actors in the field. Their assessments differ and there are no reliable statistics on economic land concession, on land disputes and on eviction notices.

Lack of information and transparency: Communication about what German development cooperation/the LRP is doing seems largely reactive and defensive. Successes and good practice examples are not proactively communicated to public stakeholders in Cambodia and Germany.

The program is not sufficiently effective: Except for land rights for women, there is not sufficient progress with respect to the human rights situation of other target groups. With respect to indigenous communities, the landless and land-poor and those in informal settlements the program has had difficulties in achieving its objectives as defined by its indicators. With

respect to informal settlements in Phnom Penh, all of LRP's efforts to enter into discussions and eventually into cooperation with the municipality of Phnom Penh have not been successful. Thus, a sizable part of LRP's shortcomings with respect to effectiveness is related to the political will on the side of key Cambodian governmental actors.

Capacity development should be extended to cover more human rights standards and principles: Thus far, advisors have been successful in supporting MLMUPC staff to adopt participatory approaches but they do not systematically address other human rights standards and principles with MLMUPC staff.

Indicators on gender are lacking: Women belong to the most vulnerable groups in the land sector and are therefore a target group of the program. However, there is no indicator measuring progress for women and gender-specific impact.

Human rights principles are not yet sufficiently anchored in the program framework: Most human rights challenges in the land sector involve discrimination, lack of accountability and of transparency. These human rights principles are not yet anchored in the program framework and in the implementation by MLMUPC. For example, the selection criteria for provinces, districts and communes for systematic registration are not transparent. Standards and criteria which are used for the solution of land disputes likewise lack transparency. Fees for sporadic registration are discriminatory for low income poor households.

# 6

## Recommendations

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### 6.1 Political level

- If evaluated positively in the August 2012 mission, the Milestone Process tying Cambodian-German cooperation to specific and time-bound commitments and targets in the area of human rights should be continued; the human rights aspects of the Milestone Process should be further highlighted through specific indicators.
- Donors should intensify political dialogue with other key government actors such as the Ministry of Agriculture, Fisheries and Forestry, the Ministry for Rural Development, and the Ministry of the Interior. Such a dialogue should center on the international obligations and national commitments for the respect and protection of land rights. In addition, it should aim to facilitate the collection of data on economic land concessions, eviction notices and land disputes. Identification of land rights "champions" in the Cambodian government would be an additional asset.
- Monitoring of the human rights situation in the land sector is a key prerequisite for informed decision-making and the ability to adapt instruments of development cooperation should circumstances deteriorate or improve. Therefore, a permanent monitoring system on forced evictions, ELCs and case load with respect to land conflicts – accessible to donors, NGOs and the government – should be developed. Alternatives might be to expand existing international systems, such as the Landmatrix (<http://landportal.info/landmatrix>) and apply them to Cambodia or to scale-up and streamline existing NGO monitoring approaches (by NGO Forum, LICADHO, Adhoc). The data system should be publicly accessible and based on verified information. The development of such a system should be supported by German Development Cooperation.

- Enhancing the human rights-based approach will require transparent and accountable planning, implementation and monitoring in Germany and in Cambodia. Thus, consultation with and participation of stakeholders, such as NGOs in Germany and Cambodia, should become a regular feature. Potential formats are: regular (every six months) round tables in the German Embassy in Phnom Penh, use of existing discussion fora, such as BMZ Ländergespräche, briefings on current developments by e-mail.
- Given the low governance level in the land sector, cooperation needs to focus on capacity development and technical support. No financial support should be provided if it is not coupled with technical cooperation measures. The human rights and general low governance situation does not appear to allow sector budget support for the time being. Should sector budget support be provided to enable scaling-up, it needs to contain human rights triggers with teeth (conditionality clause) and be regularly and transparently monitored.

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### 6.2 Technical level

To increase long-term relevance:

- Specific concepts need to be developed for areas with conflicting claims and informal settlements where proof of ownership and other land rights is particularly difficult. These approaches should also include special mechanisms for mediation and conflict resolution, as well as specific capacity development for state officials and NGO and their dialogues.

To enhance effectiveness:

- The human rights situation in informal urban settlements, including Phnom Penh, needs to be

addressed as a matter of urgency. To this effect, all avenues need to be explored to establish dialogue with the Ministry of Interior and the municipality of Phnom Penh. The good practice and success of Battambang should be widely communicated and the development of (human rights-oriented) guidelines for the application of Circular 03 should be supported.

- An assessment of vulnerability including geographic and socio-economic factors should be carried out and used to formulate a strategy for how to reach the program's target groups more effectively.
- The piloting of social land concessions combined with collateral livelihood support should be continued to effectively and sustainably address poverty and exclusion of vulnerable groups.

To enhance the human rights-based approach:

- Systematically include human rights principles (transparency, accountability, participation and non-discrimination) as central aspects into the LRP program framework.
- Support the development and publication of criteria for the selection of provinces, districts and communes for systematic registration.
- Support the development and publication of predictable and transparent criteria for dispute resolution.
- Support MLMUPC to act with more transparency and accountability and to revise the discriminatory nature of fees for sporadic registration.

- Add a human rights dimension to capacity development in order to address MLMUPC staff in their role as duty-bearers.
- Develop a gender-specific indicator or, alternatively, disaggregate all indicators on gender.
- Utilize and propagate the use of human rights guidelines (on forced evictions, the right to food, responsible governance of land) as guides for the implementation of human rights obligations.
- Proactively and regularly communicate to NGOs and other stakeholders what the program is doing and not doing and what it is achieving and what it cannot achieve.
- Increase cooperation with other duty bearers, i.e. ministries that are key actors in the land sector, including the Ministry of Agriculture, Forestry and Fisheries, the Ministry for Rural Development, the Ministry for Infrastructure, Industry and Mining and the Ministry for the Interior. Identified human rights "champions" among high ranking state officials might help to generate human rights awareness and sensitivity and hence improve the implementation of land rights.
- Contribute to the establishment of a database to collect information on economic land concessions, eviction notices and land disputes in all provinces.
- Work with partners to establish an accessible mechanism for grievances occurring in the implementation of the program, e.g. through respective boxes in the communes.

# 7

## Annexes

### 7.1 Terms of Reference

#### 1. Background

Since 2004 the German Federal Ministry for Economic Cooperation and Development (BMZ) pursues a policy requiring that German Development Cooperation across all sectors and levels of intervention to be committed to human rights.

The human rights-based approach implies a systematic orientation across all sectors of German Development Cooperation on existing human rights obligations regarding economic, social, cultural, civil and political human rights; the application and promotion of the human rights principles non-discrimination and equality of opportunity, participation and empowerment, and transparency and accountability<sup>59</sup>.

This orientation has implications for the "What" of German Development Cooperation regarding the selection of partner institutions, thematic focus areas and concrete activities. At the same time – in applying the human rights principles – it also affects the "How" of the Cooperation and its methodological and conceptual orientation.

#### Cambodia

Cambodia has ratified the six most important international human rights treaties and has thereby obligated

itself to realize the rights contained therein at national level<sup>60</sup>.

#### The Cambodian Land Sector Program (LAMDP)

The vision of the Royal Government of Cambodia in the land sector is "to administer, manage, use and distribute land in an equitable, transparent, efficient, and sustainable manner in order to contribute to achieving national goals of poverty alleviation, ensuring food security, natural resources and environmental protection, national defense and socio-economic development in the context of market economy".

Based on the National Strategic Development Plan – Update 2009–2013, as well as the Royal Government's Declaration on Land Policy which serves as a roadmap, the Royal Government in order to support the Land Reform Program for 2009–2013 designed the Cambodian Land Sector Program (LAMDP), consisting of three Land Sub Sectors namely:

Land Administration Sub Sector Program (LASSP),  
Land Management Sub Sector Program (LMSSP) and  
Land Distribution Sub Sector Program (LDSSP).

<sup>59</sup> See BMZ Strategy Paper 4/2011 Human Rights in German Development Policy and BMZ Strategy Paper 2/2012 Investment in Land and the Phenomenon of Land Grabbing

<sup>60</sup> International human rights treaties ratified by Cambodia: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) including the right to housing and protection from forced evictions (art.11.1), right to food (art.11.1), right to earn one's living ("right to work") (art.6), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC). CRPD was signed in 2007.

## Current Situation in the Cambodian Land Sector

With the distribution of 1.74 million land titles (as of October 2011)<sup>61</sup> and the allocation of land to population groups with no or little land, the land sector program already makes important contributions to securing the human rights to housing, food and work. So far, over 350,000 rural households, 85 percent of which are poor, have received private land titles.

However, despite isolated instances of progress having been made with regard to developing and implementing plans for land reform in Cambodia, there is still considerable need for reform. There are still no clear strategies and implementation guidelines for important parts of the land sector, guidelines that take adequate account of the rights of landless and land-poor groups, and of women, indigenous groups and informal settlers. In many areas the national "Land Administration, Management and Distribution Program" (LAMDP) is being implemented very slowly because of a lack of institutional capacity and partly because of resistance from influential circles. The staff of the national, regional and local authorities responsible for these tasks lack adequate specialist training. Apart from that, there is no overall plan for land use development as yet. There is an official procedure for granting land titles, but, as stated above, so far it has not been adequately implemented. The people are not adequately informed about land rights and as a result are not able to claim their rights. Moreover, since the reintroduction of private ownership of land, the number of landless and land-poor households has risen. The lack of a transparent, poverty-oriented mechanism for the distribution of state-owned land also means that the proportion of such households is continuing to rise. Procedures for resolving land disputes are lengthy and often place socially weaker groups at a disadvantage.

Involuntary resettlements of people in both urban and rural areas – often carried out with force – pose a particular challenge, which in recent times were heavily criticized by the UN Human Rights Council and other

UN human rights mechanisms,<sup>62</sup> national,<sup>63</sup> German and international NGOs<sup>64</sup>, the World Bank<sup>65</sup> and international media.

The upshot is that the majority of Cambodians, especially socially disadvantaged groups, still do not enjoy secured land rights.

## Milestone Process

The Cambodian and the German Governments therefore agreed during their last governmental negotiations on December 2011 on a second Milestone Process to be implemented from 2012 through 2015. The process is intended to support and accelerate the reform program of the Royal Government of Cambodia in the land sector, in particular in areas related to the poor and landless. The Milestone Process will have two phases. The first phase consists of two short-term milestones which both sides agreed should be reached by June 2012. The second phase relates to milestones for the period of 2013 to 2015, and will be jointly defined during extraordinary Government consultations in September 2012.

There will be a separate assessment of the Milestones Progress by a BMZ consultant in August 2012 with special regard to the milestones that should be achieved by June 2012:

Land title production in Svay Rieng to have at least doubled during the five months from January 2012 to May 2012; elaboration of a concept for speeding up systematic land registration including work plan, budgetary requirements (costs and revenue); elaboration of a concept for improvements on subsequent registration; elaboration of a concept for the avoidance of (temporary) exclusions from the registration process; elaboration of a strategy and plan for state land distribution for the landless and land poor; elaboration of a concept on creation of the necessary policy and legal environment for making results of official land use planning.

<sup>61</sup> A total of 2.4 million titles were registered, 1.8 million signed and 1.74 million distributed (as at October 2011).

<sup>62</sup> Final remarks, ICESCR, 2009, para 30.

<sup>63</sup> Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Five Shooting Incidents at Land Dispute Protests in the Past Two Months Show Alarming Increase in Use of Lethal Force, Presseerklärung 26.1.2012.

<sup>64</sup> NRO-Schattenbericht zu extraterritorialen Menschenrechtsverletzungen Deutschlands im Landsektor in Kambodscha von Oktober 2010, submitted by FIAN Deutschland et al.

<sup>65</sup> Inspection Panel Investigation Report: Cambodia – Land Management and Administration Project. November 30, 2010.



## 2. Objective, purpose and use

The objective of the mission is to undertake an independent assessment of human rights issues related to the German–Cambodian Land Rights Program (LRP) in order to gain insights which can be used for management decisions by the BMZ as well as for a possible next phase of the LRP (03/2013– 02/2016). Dr. Lüke is seconded by the German Institute for Human Rights (GIHR).

## 3. Description of the task

### 3.1 Object of the assessment

The object of the assessment is the Land Rights Program (LRP) (supported by German TC and implemented by GIZ).

The Cambodian "Land Administration, Management and Distribution Program (LAMDP) is supported by Germany since 2002 through a development program called "Support to the Cambodian Land Sector Program". The objective of this development program is: Poor rural and urban strata of the population are enabled to better realize their human rights to food and habitation (in German: Das Ziel des EZ-Programms lautet: Die arme ländliche und städtische Bevölkerung, insbesondere Frauen, kann ihre Menschenrechte auf Nahrung und auf Wohnung besser verwirklichen).

This program is currently implemented by the GIZ through the "Land Rights Program" (LRP)<sup>66</sup> (3/2011–2/2016) (PN: 2009.2169.2). The objective of the Land Rights Program is: "The proportion of Cambodians having legally secure access to land is socially balanced and has risen within the framework of a comprehensive spatial planning concept".

### 3.2 Key Questions to be considered

Evaluation criteria are the five OECD/DAC criteria (relevance, effectiveness, efficiency, impact and sustainability), considered from a human rights point of view. In particular Dr. Lüke will review the relevance

and effectiveness of the LRP from a human rights point of view. This includes an analysis of human rights issues and their incorporation in the legal framework, the contribution of the program to the progressive realization of human rights as well as unintended positive/negative effects of the program regarding human rights and recommendations for a possible next phase of the Land Rights Program from a human rights perspective. The recommendations take into account that Germany's support to the Land Sector is an integral part of a coordinated support of various Development Partners (Finland, Canada and prospectively the EU).

Answers are to be sought to the following questions, among others:

#### Relevance

- What are the major human rights challenges in the Cambodian land sector and their causes?
- To what extent have human rights issues in the land sector been incorporated in the relevant laws and regulations?
- To what extent have laws and regulations that incorporate human rights issues in the land sector been recognized and implemented by the Cambodian counterparts?
- To what extent has the program incorporated existing human rights and gender analysis or conducted such analysis?
- Is the program still focusing on the right priorities considering the tensions over the human rights situation in the land sector?
- Within its envisaged orientation how can the LRP consider human rights standards and principles in a more systematic manner?
- Which other human rights issues are of relevance for the Cambodian Land Sector Program and should be raised in the policy dialogue with the Cambodian Government?

<sup>66</sup> In future a financial assistance project, KfW will complement technical assistance by GIZ.

## Effectiveness

- To what extent so far has the LRP achieved or is likely to achieve its objectives and indicators (as laid down in the Implementation Agreement for the current phase 1/2011 until 2/2013), regarding those dimensions with special relevance to human rights?
- Which areas – from a human rights perspective – may need more attention or have the potential for greater scope?
- Is it necessary to further emphasize certain human rights aspects and how should this be done?
- To what extent so far has the LRP reached its target groups among the right-holders, in particular women? What mechanisms are in place to secure inclusion of the most vulnerable among the right holders?
- Which right holders may need more attention as target groups – from a human rights perspective?
- What are the major factors influencing the achievement or non-achievement of the objectives and reaching/not-reaching the target groups?
- What mechanisms has the program established to secure stakeholder engagement (including organized civil society) and participation by the different parts of its target group?
- How does LRP address capacity gaps (and/or lack of political will) of duty-bearers with respect to transparency and accountability? How effective is it in doing so?
- What mechanisms has the program established to ensure transparency and accountability about its own activities and sphere of influence?
- To what extent is the human rights-based approach used in the programs impact monitoring system?

## Efficiency

- Does the program have sufficient resources (budget /time/staff capacity) to consistently address the human rights dimensions pertinent to the program?

## Impact

- To what extent have activities so far contributed to the progressive realisation of human rights (including mechanisms for Cambodian citizens to safely claim rights, in particular poor and marginalized sections of the population)?
- What other effects with regard to human rights, unintended positive or negative, have been produced by the program's activities?

## Sustainability

- Are there any risks for the sustainability of the program's results with regard to human rights issues? Are there any factors that could contribute to enhancing sustainability?

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## 4.Procedure

### 4.1 Preparation and Mission phase

Dr. Lüke will accompany, to the extent possible, the project progress review (PPR) mission of the GIZ of the LRP, taking place in Mai/June 2012.

### 4.2 Approach and Methods

During the course of her mission, Dr. Lüke will involve key stakeholders to the greatest extent possible. She will seek to gather the viewpoints both of governmental and non-governmental institutions and organisations and of other relevant stakeholders including the target groups of the LRP and GIZ personnel.

Review methods to be used include literature and project documentation review and interviews with relevant stakeholders. Dr. Lüke will work, to the extent possible, in close cooperation with the GIZ human rights expert and the rest of the PPR mission in order to create synergies. To ensure credibility of review findings, data will be triangulated as far as possible. To ensure the relevance of conclusions and recommendations they will be discussed as far as possible with key stakeholders (debriefing planned in Cambodia and in BMZ, Bonn).

Relevant human rights standards to be used for the assessment are the respective ICESCR standards, as

well as the General Comments and the Concluding Observations interpreting them. In addition, guidelines developed by the Special Rapporteurs (e.g. forced evictions), and FAO Voluntary guidelines (Right to Food, Responsible Governance of Tenure of Land) shall be used where relevant for the LRP. For the policy environment, the respective BMZ strategies are to be consulted (BMZ Strategy Paper 4/2011 Human Rights in German Development Policy, the BMZ Strategy Paper 2/2012 Investment in Land and the Phenomenon of Land Grabbing) as well as the relevant Cambodian Strategies. The United Nations Evaluation Group (UNEG) document "Integrating Human Rights and Gender Equality in Evaluation – Towards UNEG Guidance" will be used as methodological guide.

## 5. Deliverables

Prior to departure Dr. Lüke will develop an evaluation matrix that will be discussed and agreed upon with BMZ. After her field mission Dr. Lüke will send a debriefing note to BMZ.

Dr. Lüke will submit a report (in English) to the BMZ evaluation division (abstract/summary; background/situation analysis; findings, conclusions and recommendations; up to 20 pages without annexes). The annexes of the report will include the review program, the list of resource persons contacted, the list of documents used and the evaluation matrix.

## 6. Management of the assessment

The assessment will be managed by the BMZ evaluation division (BMZ-E) and the German Institute for Human Rights (GIHR). GIHR is responsible for administering the assessment contract and is also the point of contact for the commissioned consultant. The working units in the BMZ responsible for development cooperation with Cambodia and human rights issues as well as the German Embassy (Counselor Riad), GIZ and the KfW will be included in the reference group that will participate in meetings, comment on the product of the assessment and support the consultant, for example by providing documents and other infor-

mation and arranging meetings with interview partners.

## 7. Timetable

### Preparation and mission phase:

Briefing in BMZ with PPR experts incl. GIZ human rights expert (calendar week 21: 22-05-2012)

Mission: 05-06-2012 – 19-06-2012

Arrival: 04-06-2012

Start-up: 05-06-2012

Presentation findings: 15-06-2012

Departure: 19-06-2012

### Synthesis phase:

calendar week 26 Draft of report: (calendar week 26: 01-07-2012)

calendar week 27: Commenting on draft by GIHR and BMZ-E; revision of draft

calendar week 27-28 (10-07-2012): Dissemination to BMZ, German Embassy (Counselor Riad), GIZ (Eschborn and Cambodia) and KfW (Frankfurt and Cambodia)

calendar week 28 through 31: Commenting on draft: BMZ, German Embassy Cambodia, GIZ

calendar week 31-32 (03-08-2012): Debriefing in BMZ (in the morning) and debriefing in BMZ with GIZ (in the afternoon)

calendar week 32: Final version of report

## 7.2 Mission Schedule

Date	Information source	Contact/interview partner
5 June Phnom Penh	Presentation and discussion	H.E Sar Sovann, General Director and Director of LA SSP Suon Sopha, Director Department of Land Administration H.E. Kea Samoeun, Deputy Governor of Svay Rieng
Car transfer	Discussion	Hady Riad, Counselor for Economic Cooperation, German Embassy Phnom Penh
6 June Svay Rieng Province	Presentation and interviews, field visit	s.a. Gerald Läzer, KfW, Priority Area Coordinator
7 June Phnom Penh	Interview	Marcos Smith, ZFD-Koordinator
	Presentation and discussion	Anti Inkinnen (Foreign Office, Finland), Jouni Antionnen (Finmap), Anne Thomson (CIDA), Volker Müller (Team leader GIZ, LRP), Poch Sophon (GIZ LRP) Sar Sovann
	Interview	Daniel Gonzales-Levassor, EU-Delegation
8 June Phnom Penh	Interview	Vishnu Law Group : Ly Sokha, Legal Officer; Im Phanna, Lawyer; Sam Long, Paralegal; Tep Neth, Deputy Manager
	Debriefing PPR-Team	PPR Team, Petra Schill (Deputy Country Director GIZ), Hady Riad (Development Counselor, German Embassy)
	Discussion	NGO Working Group for the Implementation of Circular 3 (Abdul Rashid Katri, Community Managed Development Partners, Officers from Vishnu Law Group, CVS, CEDT)
10 June Phnom Penh	Interview	Volker Müller, Team Leader, GIZ LRP
11 June	Interview	OHCHR (Taryn Lesser, Coordinator Land and Housing Rights Unit)
	Discussion	LICADHO (Matthew Pellerin (monitoring housing rights), Evi Schuler (legal officer))
	Discussion	Heinrich-Böll-Foundation (Manfred Hornung, Country Director)
12 June	Discussion	Equitable Cambodia: Eang Vuthy (representative, David Pratt, Nathalie Bugalski via Skype)
	Discussion	Housing Rights Task Force: Sia Phearum, Secretariat Director
	Discussion	Ralf Symann (EH-Coordinator LRP), Silke Hattendorf (EH)
13 June Battambang	Discussion	Employees of Municipality, Christina Schade, Norin Brookhuis (both EH)
	Field Visit	Informal settlements in Battambang: Eike Pheap Community, Klat Leap Village
	Discussion	Abdul Rashid Katri, Community Managed Development Partners
	Interview	Mr. Pen Hap Head Municipality Council

Date	Information source	Contact/interview partner
14 June Phnom Penh	Discussion	Community Legal Education Center: Yeng Virak, Director; Chum Narin, Head of Unit, Land & Natural Resources
	Discussion	NGO Forum: Savun Sam Ol, Deputy Director; Phann Sithan, Land and Livelihoods, Program Manager, Christoph Odenburg, Advisor, Land and Livelihoods
15 June	Field visit and discussions	Boeung Kak, Village 23; STT: Nora Linidstroem, Programme Development Manager, Ee Sarom, Programme Coordinator
	Preliminary debriefing	Hady Riad, Counselor, German Embassy, Phnom Penh; Volker Müller, Team Leader GIZ LRP; Petra Schill, Deputy Country Director GIZ; Katrin Adams, GIZ Human Rights Expert.
16 June Kratie	Field visit	Ms Uch Sophas, GIZ LRP; Sambek Community.
17 June Ratanakiri	Interviews	Mr. Mey Phalla ,ILO; Mr. Heang Thira and Mr. Pouy Sithav, German Agro Action
18 June Phnom Penh	Discussion	Liam Fee (UN Habitat) Keat Bophal (OHCHR), Taryn Lesser (OHCHR)
19 June	Discussion	ADHOC: Hun Saray, President; Nicolas Agostini, Technical Assistant
	Discussion	German Agro Action: Christina Warning, Country Director; Thun Soriya, National Programme Coordinator
	Interview	Dr. Ou Vuddy, GS-SLP

## 7.3 List of Documents

<b>ADHOC</b>	The Report of Land and Housing Rights, 2011 (March 2012)
<b>BMZ</b>	Strategy Paper 4/2011, Human rights in German Development Policy
<b>BMZ</b>	Strategy Paper 2/2012, Investment in Land and the Phenomenon of Land Grabbing
<b>BMZ</b>	Summary Record of the Negotiations on Development Cooperation between the Government of the Federal Republic of Germany and the Royal Government of Cambodia held in Bonn on 13 and 14 December 2011
<b>BMZ / Cambodian-German Development Cooperation</b>	Joint Strategy for the Priority Area "Rural Development" February 2011.
<b>Cambodia Daily</b>	Carving up Cambodia, Weekend Feature, 11/12 March 2012. Police Detain 13 Females Boeung Kak Protesters, 23 May 2012. Land Concessions Signed After Hun Sen Ordered Moratorium, 15 June 2012
<b>Clapham, Andrew / Scott Jerbi</b>	Categories of Corporate Complicity in Human Rights Abuses, 2001. <a href="http://198.170.85.29/Clapham-Jerbi-paper.htm">http://198.170.85.29/Clapham-Jerbi-paper.htm</a>
<b>FIAN et al</b>	Extraterritorial State Obligations. Parallel report in response to the 5th Periodic Report of the Federal Republic of Germany on the implementation of the International Covenant on Economic, Social and Cultural Rights. 2011
<b>Food and Agriculture Organization of the United Nations</b>	Voluntary Guidelines on the Right to Food (127 <sup>th</sup> session of the FAO Council, Nov. 2004
<b>GFA Consulting Group</b>	Environmental and Social Impact Assessment of the Proposed Land Sector Project in Cambodia for KFW Entwicklungsbank, Feasibility Study
<b>GIGA</b>	Kambodscha, Politökonomische Kurzanalyse 2011
<b>GIZ Land Rights Program</b>	Gender Analysis for the GIZ Land Rights Program in Cambodia, 2012 plus Annexes
<b>Housing Rights Task Force</b>	Socio Economic Impact of Forced Evictions at the household level in Phnom Penh (Dec. 2011)
<b>Heinrich Böll Foundation Cambodia</b>	A human rights approach to development of Cambodia's Land Sector, Discussion Paper of June 2012
<b>Heitkamp, Thorsten</b>	Review on the Implementation of Circular 03 on Resolution on Temporary Settlements on Land which has been Illegally Occupied in the Capital, Municipal and Urban Areas of May 2012
<b>KFW /GIZ</b>	Gemeinsame Berichterstattung (BE) zum LEZ-Programm Unterstützung des kambodschanischen Landsektorprogramms 2012
<b>Kingdom of Cambodia</b>	1993 Constitution
<b>Kingdom of Cambodia</b>	2011 Civil Code
<b>Kingdom of Cambodia</b>	2002 Forestry Law
<b>Kingdom of Cambodia</b>	2001 Land Law
<b>Kingdom of Cambodia</b>	Sub-decree on procedures of registration of land of indigenous communities
<b>Kingdom of Cambodia</b>	Sub-decree on Organization and Functioning of the Cadastral Commission
<b>Kingdom of Cambodia</b>	Sub-decree On Social Land Concessions
<b>Kingdom of Cambodia</b>	Sub-decree on Economic Land Concessions
<b>Kingdom of Cambodia</b>	Sub-decree on State Land Management

<b>Kingdom of Cambodia</b>	Inter-Ministerial Circular on Interim Protective Measure Protecting Lands of Indigenous Peoples that has been requested for collective ownership titling, while awaiting titling process according to procedures to be completed.
<b>Kingdom of Cambodia</b>	Circular No. 02 on Measures against Illegal Holding of State Land
<b>Kingdom of Cambodia</b>	Circular No. 03 on Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas
<b>Kingdom of Cambodia</b>	Policy on Registration of and Right to Use Lands of Indigenous Communities in Cambodia
<b>Ministry of Land Management, Urban Planning and Construction</b>	Implementation Agreement with Deutsche Gesellschaft für Internationale Zusammenarbeit on Land Rights Program, Phase I (March 2011 to February 2012)
<b>Ministry of Land Management, Urban Planning and Construction</b>	Report on Achievements of Land Reform Implementation 2002-2009
<b>Ministry of Land Management, Urban Planning and Construction</b>	Annual Progress report 2010
<b>Ministry of Land Management, Urban Planning and Construction</b>	Land Administration Sub Sector Program (LASSP), FIFTH Joint Supervision Mission, June 4 to June 8, 2012, Joint Supervision Mission Report
<b>Ministry of Land Management, Urban Planning and Construction</b>	Prakas on the Guidelines and Procedures of the Cadastral Commission
<b>Ministry of Land Management, Urban Planning and Construction</b>	Prakas on Guidelines for Implementing Sub-Decree on Social Land Concession
<b>Ministry of Land Management, Urban Planning and Construction</b>	Prakas on Identification, Mapping and Classification of State Land
<b>Ministry of Land Management, Urban Planning and Construction, Ministry of Rural Development, Ministry of the Interior</b>	Handbook for Identification of Indigenous Communities, Development of Bylaws, Preliminary Mapping and Internal Rules, and Demarcation and Registration of Collective Land of Indigenous Communities, Draft of Jan 2012
<b>NGO Forum</b>	Statistical Analysis on Land Disputes in Cambodia 2010 (of June 2011)
<b>NGO Working Group</b>	Parallel Report to CEDAW; Phnom Penh 2009
<b>Phnom Penh Post</b>	Girl killed in eviction, 17 May 2012 PM defends ELC signing, 12 June 2012 Critics dismiss Hun Sen's pledge as empty promises, 15 June 2012
<b>.Sahmakum Teang Tnaut</b>	Displaced Families in Phnom Penh: 1990-2011. May 2011 <a href="http://teangtnaut.org/PDF/F&amp;tF%20displaced%20PP%20families%202011%20update.pdf">http://teangtnaut.org/PDF/F&amp;tF%20displaced%20PP%20families%202011%20update.pdf</a>
<b>UN Committee on Economic, Social and Cultural Rights</b>	General Comment 7 (1997) on the Right to Housing – Forced Evictions
<b>United Nations Human Rights Council</b>	Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia the promotion and protection of human rights 2010, A/HRC/18/47
<b>UN Special Rapporteur on the Situation of Human Rights in Cambodia</b>	Report of 2009, A/HRC/12/40, 31 August 2009
<b>UN Special Rapporteur on the Situation of Human Rights in Cambodia</b>	Press statement, 11 May 2012

<b>UN Special Rapporteur on the Situation of Human Rights in Cambodia</b>	Report of 2012, A-HRC-21-63-Add1, 24 September 2012
<b>UN Special Rapporteur on adequate housing</b>	Basic Principles and Guidelines on Development-based Evictions and Displacements, Annex 1 of the Report of the special rapporteur on adequate housing as a component of the right to an adequate standard of living, (A/HRC/4/18)
<b>Welthungerhilfe</b>	Increasing Pressure for Land - Implications for Rural Livelihoods in Developing Countries: The Case of Cambodia – Report of Oct. 2011
<b>The World Bank</b>	Report No. 58016-KH, Inspection Report. Cambodia, Land Management and Administration Project (Credit No. 3650-KH) 2010 Management Report and Recommendation in response to the Inspection Panel Report: Cambodia LMAP, January 2011



#### 7.4 Concluding observations of the Committee on Economic, Social and Cultural Rights May 2009 (excerpt)

15. The Committee is deeply concerned about the most recent FAO global forest survey estimating that the State party has lost 29 per cent of its primary tropical forest cover over the last five years, one of the most serious cases being the continuing destruction of the Prey Long forest in Northern Cambodia. The Committee is also concerned about the reports that the rapid increase in economic land concessions in the last several years, even within the protected zones, is the major factor in the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival. (art. 1)

The Committee urges the State party to review its policy regarding the conversion of protected zones into economic concessions, by conducting environmental and social impact assessments including consultations with relevant stakeholders and communities with due regard to their right to participate in informed decisions that affect their lives. The Committee strongly recommends that the granting of economic concessions take into account the need for sustainable development and for all Cambodians to share in the benefits of progress rather than for private gain alone. The Committee requests the State party to give, in its next periodic report, detailed information on the progress made in the implementation of these policies.

16. The Committee notes with concern that the 2001 Land Law, which provides for the titling of indigenous communities' communal lands, has not been implemented effectively and that so far, no indigenous community has received any land title. The Committee also notes with concern, the adverse effects of the exploitation of natural resources, in particular mining operations and oil exploration that are being carried out in indigenous territories, contravening the right of indigenous peoples to their ancestral domains, lands and natural resources. (art. 1)

The Committee urges the State party to implement the 2001 Land Law without further delay and to ensure that its policies on registration of communal lands do not contravene the spirit of this law. The Committee emphasizes the need for carrying out environmental and social impact assessments and consultations with

affected communities with regard to economic activities including mining and oil explorations, with a view to ensuring that these activities do not deprive the indigenous peoples of the full enjoyment of their rights to their ancestral lands and natural resources. The Committee encourages the State party to consider ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.

28. The Committee notes with serious concern that, according to a 2008 study on food prices, about 12 per cent of households or 1.7 million individuals were food-insecure and most affected by food price increases and that these numbers could increase to 2.8 million during the lean season (art. 11).

The Committee recommends the State party to strengthen its strategic interventions in response to the alarming situation of increasing food insecurity. The Committee requests the State party in its next periodic report to provide detailed information on the results of these strategic interventions.

29. The Committee is deeply concerned about the continued delay in the adoption of a national housing policy in the State party, and about the large number of urban dwellers living in slums, without adequate housing (art. 11).

The Committee urges the State party to adopt as a matter of priority, a National Housing Policy that would upgrade poor urban settlements and ensure security of tenure, with clear institutional responsibilities at the national, provincial and local levels, and adequate financial resources for its effective implementation.

30. The Committee is gravely concerned over reports that since the year 2000, over 100,000 people were evicted in Phnom Penh alone; that at least 150,000 Cambodians continue to live under threat of forced eviction; and that authorities of the State party are actively involved in land-grabbing. The Committee notes with deep concern that the rate of large-scale forced evictions has increased over the last 10 years due to increased public works, city beautification projects, private urban development, land speculation, and the granting of concessions over vast tracks of land to private companies. It is also concerned about the lack of effective consultation with, and legal redress for, persons affected by forced evictions, as well as the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties. It is also

concerned over reports of violence during the evictions, in some cases carried out by the police. The Committee notes with serious concern the example highlighted on 6 May 2009, by the Special Rapporteur on adequate housing, over the possible imminent eviction of "Group 78", who have been involved in a legal battle over their land since 2004, as well as the forced eviction and threats of forced eviction in Sambok Chap in Tonle Bassac, Mittapheap in Sihanoukville, Boeung Kak Lake, Dey Krahorn and Borei Keila in Phnom Penh, among others (art. 11).

The Committee urges the State party to implement a moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed, in order to ensure the protection of human rights of all Cambodians, including indigenous peoples. The Committee recommends that the State party undertake urgent consultations with all stakeholders in order to reach a definition of "public interest" to complement the 2001 Land Law and develop clear guidelines for possible evictions. The Committee also urges the State party clearly to identify the demarcation of State public land and State private land. The Committee strongly recommends that the State party, as a matter of priority, undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects and to ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation that complies with the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions and guarantee that relocation sites are provided with basic services including drinking water, electricity, washing and sanitation, as well as adequate facilities including schools, health care centres and transportation at the time the resettlement takes place. The Committee also draws the attention of the State party to the guidelines on Development-based Evictions and Displacements (A/HRC/4/18), prepared by the Special Rapporteur on adequate housing.

31. The Committee expresses its deep concern about the culture of violence and impunity prevalent in the State party and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights. The Committee is also concerned about reports that the court system has been used to legitimize forced evictions and falsely prosecute housing rights defenders (art. 11).

The Committee urges the State party to take all necessary measures to combat the culture of violence and impunity prevalent in the State party, and for the protection of human rights defenders, including indigenous leaders, peasant activists engaged in defending the economic, social and cultural rights of their communities against any intimidation, threat and violence, whether perpetrated by State security forces and agents or non-State actors. It also calls on the State party to ensure that all alleged cases of repression and abuse are promptly and thoroughly investigated, and that alleged perpetrators are prosecuted and appropriately punished, if found guilty. The Committee requests the State party to provide, in its next periodic report, detailed information on the progress made in preventing and punishing the repressions and abuses.

38. The Committee urges the State party to ensure that maximum available resources are allocated for the protection and fulfilment of economic, social and cultural rights, especially to the most vulnerable and marginalized individuals and groups. The Committee encourages the State party to foster transparency and accountability to improve effectiveness in the implementation of development programs funded by international donors, in particular for judicial and institutional reforms and for the improvement of the lives of those living in poverty. In this regard, the Committee draws the attention of the State party to its general comment No. 3 on the nature of States' parties obligations (E/1991/23) and its Statement on "An evaluation of the obligation to take steps to the 'maximum of its available resources' under an Optional Protocol to the Covenant" (E/C.12/2007/1) (art. 2.1).

## 7.5 Evaluation Matrix

Evaluation questions	Descriptors	Judgment criteria	Data collection methods and data sources
<b>Evaluation Criterion RELEVANCE</b>			
<p>What are the major human rights challenges in the Cambodian land sector and their causes?</p> <p>How does the program contribute to meet these challenges?</p> <p>What has been achieved so far?</p>	<p>The Cambodian land sector, including private actors and duty bearers (Ministries in charge, with their regional and local sub-branches, registration offices etc.), LRP, (newly registered areas and informal settlements.</p>	<p>International human rights standards and guidelines, reporting and cooperation with international governmental and non-governmental organizations; involvement with civil society.</p>	<p>Interviews with various stakeholders; human rights reports by the Royal Government of Cambodia, UN human rights bodies and civil society; on-site visits.</p>
<p>To what extent have human rights issues in the land sector been incorporated in the relevant laws and regulations?</p> <p>How have the relevant processes (beyond the milestone process) been initiated?</p> <p>How does the program contribute to achieve this?</p> <p>To what extent have laws and regulations that incorporate human rights been recognized and implemented by the Cambodian counterparts?</p>	<p>Land laws, regulations, guidelines and handbooks; and their practical interpretation,</p>	<p>Compatibility with international human rights standards and principles.</p>	<p>Legal analysis, interviews with government and program officers, civil society.</p>
<p>To what extent has the program incorporated existing human rights and gender analysis or conducted such analysis?</p>	<p>LRP</p>	<p>Human rights and gender standards</p>	<p>LRP documents and reports, interviews with program staff.</p>

Evaluation questions	Descriptors	Judgment criteria	Data collection methods and data sources
<p>Is the program still focusing on the right priorities considering the tensions over the human rights situation in the land sector?</p> <p>Which areas- from a human rights perspective – may need more attention or have the potential for greater scope? (special focus on conflict resolution and gender issues; also to be considered as question on effectivity)</p> <p>Which rights holders may need more attention as target groups – from a human rights perspective? Is the definition of target groups adequate? (also to be considered as question on effectivity)</p> <p>Is it necessary to further emphasize certain human rights aspects, e.g. the question of conflict solution, access to justice? How should this be done? (also to be considered as question on effectivity)</p> <p>Which other human rights issues are of relevance for the Cambodian Land Sector Program and should be raised in the policy dialogue with the Cambodian Government?</p> <p>Are there any good practices in the program which could be presented as a model? Are there any good practices in the work of other development partners which might be of value for future programming?</p>	<p>Situation of the land sector</p>	<p>Progress and challenges in the areas of human rights over the last years; engagement of other development partners; reports by UN and other human rights experts. Satisfaction of target groups. Definition of target groups; level of differentiation in terms of target groups.</p>	<p>Reports, by UN, civil society, other development partners, program staff, stakeholder and target groups discussion and interviews.</p>
<p>Within its envisaged orientation how can the LRP consider human rights standards and principles in a more systematic manner?</p>	<p>Land sector, LRP.</p>	<p>Human rights standards and principles; existing capacities.</p>	<p>Documents; interviews with program staff, government officers, target groups, other stakeholders.</p>



Evaluation questions	Descriptors	Judgment criteria	Data collection methods and data sources
Is the given framework of cooperation with NGOs feasible? Are there other, more coherent ways to cooperate with and strengthen civil society?	Structure of German development cooperation; structure of land sector in Cambodia, role of NGOs in Cambodia	Structure, role and funding of official German development cooperation; structure, role and funding of NGOs	Legislation and draft legislation in Germany and Cambodia, Budget framework; discussions with stakeholders and target groups.
Evaluation Criterion EFFECTIVITY			
<p>Which areas – from a human rights perspective – may need more attention or have the potential for greater scope? (special focus on conflict resolution and gender aspects, also to be considered as question on relevance)</p> <p>Which rights holders may need more attention as target groups – from a human rights perspective? Is the definition of target groups adequate? (also to be considered as question on relevance)</p> <p>Is it necessary to further emphasize certain human rights aspects, e.g. conflict solution access to justice? How should this be done? (also to be considered as question on relevance)</p>			
What mechanisms are in place to secure the inclusion of the target groups among the rights – holders, especially women and the most vulnerable?	Situation of poor and vulnerable groups, with special focus on national policy and implementation in the program areas.	Level of inclusion through consultation and other forms of participation.	Examination of national and local procedures, stakeholders and target groups discussions and interviews.

Evaluation questions	Descriptors	Judgment criteria	Data collection methods and data sources
What are the major factors influencing the achievement or non-achievement of the objectives and reaching/not-reaching of the target groups?	National Land Policy and implementation of Land policy in the program area, with a particular focus on indigenous areas, informal settlements, and newly registered locations.	Level of corroboration by different stakeholders, on-site observation, frequency and accumulation of situations.	On site visits, interviews.
How effective is the program to address human rights principles, e.g. transparency and accountability of duty bearers or of its own activities and are there capacity gaps to be addressed? What are the reasons for difficulties (should they exist)?	Land sector in Cambodia, government offices in the land sector, LRP.	Human rights principles (participation and empowerment; accountability and transparency; non-discrimination and inclusion of vulnerable groups) Level of consultations; information accessible and understandable; consideration of all potential target groups in a differentiated way. Understanding of human rights issues by duty bearers and program officers	Interviews, stakeholder discussion
To what extent is the human rights-based approach used in the program impact monitoring system?	LRP Impact Monitoring.	Human rights standards and principles with particular focus on participation and transparency.	LRP-Impact monitoring documents; interviews with program staff, interviews with counterparts.
To what extent so far has the LRP reached its target groups among the rights holders in particular women and vulnerable groups	Situation of poor population, indigenous groups and women with regard to land rights and the right to food in Cambodia. Ministry of Land; LRP office; geographic program area: government offices and registered areas, informal settlements.	Situation of target groups (security of tenure, rent rate, in case of displacement quality and security of replacement housing, access to basic services); change agents - link between government and program officers, mediators and target groups.	Reports by government, technical cooperation program, other development partners, interviews with government officers, program staff, target groups, on-site visits.

Evaluation questions	Descriptors	Judgment criteria	Data collection methods and data sources
<p>To what extent so far has the LRP achieved or is likely to achieve its objectives and indicators (as laid down in the Implementation agreement for the current phase 1/2011 until 2/2013) with special relevance to human rights?</p> <p>What is the LRPs strength from the human rights perspective?</p> <p>What are the challenges?</p>	LRP Monitoring	Implementation agreement, international human rights standards.	Program documents/reports; government documents/reports; interviews with target groups and duty bearers, complemented by discussions with civil society.
<b>Evaluation Criterion EFFICIENCY</b>			
Does the program have sufficient resources (budget, time/staff capacity) to consistently address the human rights dimension pertinent to the program?	LRP, land sector, with special focus on the national level and the program area.	Priority needs of the land sector; existing constraints (budget, time, capacity, engagement of other development partners, political will and reliability of the Cambodian Government),	On site visits, stakeholder and target group discussions and interviews.

Evaluation questions	Descriptors	Judgment criteria	Data collection methods and data sources
<b>Evaluation Criterion IMPACT</b>			
<p>To what extent have activities so far contributed to the progressive realization of human rights?</p> <p>Sub questions:</p> <ul style="list-style-type: none"> <li>• To what extent has the program effected the acquisit of land titles and legal security for poor people?</li> <li>• What is the contribution of the program to the protection of the right to food, especially of informal rural settlers?</li> <li>• To what extent does the program consider the issues of non- discrimination and inclusion of marginalized and vulnerable groups (indigenous population; women, others?)</li> <li>• How have communities of informal settlers been involved in the processes of land allocation and registration?</li> <li>• To what extent has the program contributed to effective dispute settlement?</li> <li>• To what extent has the program supported mechanisms for Cambodian citizens to safely claim rights, in particular women, poor and marginalized sections of the population?</li> </ul>	<p>Land sector in Cambodia with special focus on national level and program areas.</p>	<p>Objectives and indicators of LRP relating to human rights, LRP monitoring.</p>	<p>On site visits, documents, interviews with government, program staff, NGOs.</p>
<p>What other effects with regard to human rights, unintended positive or negative, have been produced by the program's activities?</p>	<p>Land sector in Cambodia.</p>	<p>Human rights standards and principles.</p>	<p>Reports (program, UN, government, media etc.); interviews and discussions with stakeholders and target groups.</p>





Evaluation questions	Descriptors	Judgment criteria	Data collection methods and data sources
Evaluation Criterion SUSTAINABILITY			
<p>Are there any risks for the sustainability of the program's results with regard to human rights issues?</p> <p>Are there any factors that could contribute to enhancing sustainability?</p>	<p>Land sector: national level and program areas, capacities of duty bearers</p>	<p>Human rights standards and principles</p>	<p>Reports (program, UN, government, media etc.), interviews and discussions with stakeholders and target groups.</p>

## 7.6 Land Rights Program – Program description (provided by GIZ)

**Title:** Land Rights Program

**Commissioned by:** Federal Ministry for Economic Cooperation and Development (BMZ)

**Country:** Cambodia

**Lead executing agency:** Ministry of Land Management, Urban Planning and Construction

**Overall term:** March 2011 to February 2016

### Context

In respect to political stability, economic growth and social development, legally secure land tenure, socially balanced access to land and comprehensive spatial planning play an important role. This applies especially to Cambodia, where the majority of the population relies primarily on agriculture for their livelihoods and most households supplement income and achieve food security through agricultural activities. Documented rights of land ownership, transparent and functioning institutions, procedures for cadastral services and land dispute resolutions are of existential significance. Legally secure access to land for informal settlers in urban and rural areas is essential in realizing human rights to food and shelter. This also applies to landless and land poor households in rural areas.

### Objective

The proportion of the poor rural and urban population having legally secure access to land is socially balanced and has risen within the framework of a comprehensive spatial planning concept.

### Approach

The Land Rights Program is a joint continuation of the German support provided through GTZ and DED in the past, and provides support to the *Ministry of Land Management, Urban Planning and Construction (MLMUPC)* and the land departments and other authorities at sub-national level in implementing all three sub-sectors of the Cambodian *“Land Administration, Management and Distribution Program” (LAMDP)*. Complex processes between government stakeholders,

civil society and the private sector are moderated for the development of policies and legal documents and spatial plans. Technical and legal advice to improve and complete the legal and policy framework is provided. High priority is given to the introduction of new technologies and procedures to speed up systematic land registration. Mechanisms for out-of-court dispute resolution for land conflicts on titled and untitled land are put in place and improved. To provide land rights to informal settlers in rural and urban areas, new administrative guidelines are piloted, which allow for regularization and other socially sustainable options. Technical support is provided to the piloting of registration of land of indigenous communities. New technically and financially feasible approaches for state land distribution to the landless are being developed. GIZ advisors also support civil society organizations working on land and housing rights for urban poor communities in Phnom Penh.

### Results achieved so far

As a result of the institutional and capacity development, today 35 registration teams comprising a staff of 1000 employees work on the systematic land registration in line with the legal requirements and more than 360.000 mostly rural households, received land tenure security. This offers more certainty in planning and additional options for economic activity. The well-functioning system is the basis for a functioning cadaster and land register, which will be expanded to the whole country in the next 10 years and, together with the gradual development of spatial plans, plays a decisive role in stabilizing the land market.

A country-wide land conflict resolution system through the *Cadastral Commissions* has been established. Besides the more than 16.000 land conflicts which have been solved in the course of the systematic registration process on untitled land, the Cadastral Commissions processed 4153 cases, including 242 complex multi-party-cases. An evaluation conducted in 2010 showed that even in multi-party-cases, in which locally powerful people were involved, the staff of the Cadastral Commissions conciliated in line with the legal requirements. The disputing parties had access to effective and fair out-of-court dispute resolution.

The established *Faculty for Land Administration and Management* is the first academic institution for the sector and ensures that necessary human resources for the implementation of the land sector reform are available. Since 2006 about 40 students have graduated

annually and are employed in the public and private sector (besides the MLMUPC, in agribusinesses, real estate firms, donor institutions and NGOs) and bring academic expertise in land law and sustainable land management into the respective organisations. Annual summer schools offer a training and exchange platform for Cambodian land experts from the public and private sector and civil society organizations.

In land distribution 1,600 formerly landless households were provided with state land in a transparent procedure and were enabled through infrastructure, agricultural training and community development to establish productive farms, to increase income and resistance to exogenous shocks. Five years after allocation of the land, the land recipients will have the right to achieve a legal ownership for the land they are currently living on. The German consultancy firm IP Consult was contracted by GIZ to advise the sub-national authorities on implementing rural development activities in the 3 pilot provinces (Kratie, Kampong Cham and Kampong Thom).

GIZ advisors support subnational administrations in spatial and sectoral planning at provincial and district level in 4 Cambodian provinces (Battambang, Takeo, Kampong Chhnang, Siem Reap). As a result, the city of Battambang developed a master plan (subsequently receiving additional funding from CDIA and ADB); the

*Provincial Department of Land Management* developed a regional plan in cooperation with district and commune councils and also established a land use database. These results facilitated community development activities with informal settlements in the city. A constructive cooperation was established between the municipality, civil society organizations and representatives of the informal communities. Additionally GIZ advisors support civil society organizations in community development and land and housing rights.

As a central result of the support to the *Council for Land Policy*, the *Declaration on Land Policy* was adopted in 2009 after an extensive public consultation and was signed by the Prime Minister. Together with the sub-decree and policy on *Registration of Land of Indigenous People* adopted in 2009, the *Spatial Planning Policy* adopted in 2011, the *National Housing Policy*, other sub-decrees and regulations and experiences gained through pilot activities, a sound political and legal basis has been provided. This enables new activities that aim at securing land rights of poor and marginal groups, the implementation of socially just solutions for informal settlers that provide formal tenure and the improved cooperation between private and state actors for sustainable land policy.

More information: [www.mlmupc.gov.kh](http://www.mlmupc.gov.kh)

## Abbreviations and Acronyms

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<b>ADHOC</b>	Cambodian Human Rights and Development Association
<b>BMZ</b>	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (Federal Ministry for Economic Cooperation and Development)
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEDT</b>	Community Empowerment and Development Team
<b>CIDA</b>	Canadian International Development Agency
<b>CMDP</b>	Community Managed Development Partners
<b>CRC</b>	Convention on the Rights of the Child
<b>CVS</b>	Cambodian Volunteers for Society
<b>DC</b>	Development Co-operation
<b>DWG</b>	District Working Group
<b>ELC</b>	Economic Land Concession
<b>EU</b>	European Union
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>FIAN</b>	FoodFirst Information and Action Network
<b>GIGA</b>	German Institute for Global and Area Studies
<b>GIHR</b>	German Institute for Human Rights
<b>GIZ</b>	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organization
<b>JSM</b>	Joint Supervision Mission



<b>KfW</b>	KfW Entwicklungsbank (KfW Development Bank)
<b>LAMDP</b>	Land Administration, Management, and Distribution Program
<b>LASSP</b>	Land Administration Sub-Sector Program
<b>LASED</b>	Land Allocation for Social and Economic Development
<b>LDSSP</b>	Land Distribution Sub-Sector Program
<b>LICADHO</b>	Cambodian League for the Promotion and Defense of Human Rights
<b>LMSSP</b>	Land Management Sub-Sector Program
<b>LMAP</b>	Land Management and Administration Program
<b>LRP</b>	Land Rights Program
<b>MoFF</b>	Ministry of Fisheries and Forests
<b>MLMUPC</b>	Ministry of Land Management, Urban Planning, and Construction
<b>NGO</b>	Non-Governmental Organization
<b>OECD/DAC</b>	Organization for Economic Cooperation and Development – Development Co-operation Directorate
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>PPR</b>	Project Progress Review
<b>SLC</b>	Social Land Concession
<b>UN</b>	United Nations
<b>UNEG</b>	United Nations Evaluation Group
<b>UN-HABITAT</b>	United Nations Human Settlements Programme

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