

Women's Perspectives:

A Case Study of Systematic Land Registration in Cambodia

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Cambodia

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This study aims to identify emerging issues regarding women's access to land in Cambodia while examining women's participation in the process of systematic land registration. Within this framework, attention is paid to joint ownership and how the joint ownership registration process has been applied in practice. The study looks in particular at cases of separated, divorced and abandoned relationships that occurred prior to systematic land registration. It also looks at issues of multiple marriages and domestic violence, and how these affect women's rights of land ownership.

It should be emphasised that the findings of this study are not representative of the general situation of women who were involved in the systematic land registration process. Analysis is based on individual cases that describe the reality of the specific women who shared their stories with the research team. It is hoped that this study will serve as a starting point for further discussion and research on the topic of women's land ownership in Cambodia.

The primary audience for this study are women's organisations at the national and local levels. The study intends to inform these organisations of the current situation regarding gender and systematic land registration. It is hoped that the organisations will use the results of this study to inform their work with female beneficiaries as well as their collaboration with female and male commune councillors.

The study will be disseminated to various stakeholders including relevant government departments, donor agencies and local and international NGOs, with the hope of establishing a platform for further discussion and consideration of necessary policy and programme amendments. While policy initiatives such as joint land ownership have been put in place to protect women's land rights, the implementation of such initiatives should be monitored by relevant stakeholders to identify challenges in their application, especially with regard to women in vulnerable circumstances.

The recognition and official registration of land tenure has become an integral part of the economic reform process in Cambodia during the past decade. Policy makers contend that the issuance of private ownership titles will increase land tenure security while promoting efficient land markets.

Within this context the Royal Government of Cambodia (RGC) has initiated a series of legislative reforms, including the passage of the 2001 Land Law, which has been operationalised through a number of implementing regulations and guidelines. Following the adoption of the Land Law, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) began a systematic land registration campaign. The campaign forms part of the Land Management and Administration Project (LMAP), which includes a programme on land titling and the development of a land registration system.

LMAP is the first phase of the government's 15-year Land Administration, Management and Distribution Program (LAMDP), which aims to strengthen land tenure security and land market efficiency; resolve land disputes; manage land and natural resources in an equitable, sustainable and efficient manner and promote land distribution with equity.¹ Between 2002 and 2007, LMAP carried

1 Land Policy Statement of the Royal Government of Cambodia, May 2001.

out systematic land registration in 11 provinces. Development partners who have supported the project are the World Bank and the governments of Finland, Germany and Canada, with technical assistance provided by FM-International Oy FINNMAP, the German Technical Cooperation (GTZ) and the Canadian International Development Agency (CIDA).

A key component of LMAP is land registration, which can happen in one of two ways: sporadic land registration and systematic land registration. Sporadic land registration is initiated at the request of a landowner, and can happen at any time (as requested by the owner). The systematic approach, initiated by the state, is the process of land titling through a determined jurisdiction, and is performed on a commune by commune basis.

The government's policies relating to land aim to protect women's rights in the process of land reform, following the RGC Strategy Framework on Land Policy. The framework recognises that "for land policy to meet the needs of all Cambodians it must be responsive to the needs of women. One main principal of such responsiveness is that land titling will continue to be available in the form of joint ownership between husband and wife."² Furthermore, the government's land policy framework emphasises that women should be represented in various commissions and committees.

Thus far more than one million titles have been issued to individuals in the first phase of the land registration programme, both in rural and urban areas.³ A basic survey carried out by LMAP in 2007 on systematic land registration in rural areas and cities found that female

2 Royal Government of Cambodia, Strategy Framework on Land Policy, Interim paper, 2002.

3 "Land Titling and Poverty Reduction: A Study of Two Sangkat in Prey Nup District, Sihanoukville Municipality." Analysing Development Issues (team and research participants) in collaboration with the Land Information Centre/NGO Forum on Cambodia, November 2007.

owners outnumbered male owners in overall numbers. The survey showed that 20 percent of land titling was made in the wife's name, 5 percent in the husband's name and 70 percent was made under joint ownership.⁴ Joint ownership means that the right of land ownership is equally shared by husband and wife and the title bears both names. This confirms the status of land as marital property, thereby reducing the potential for fraudulent or incorrect claims of individual ownership. Joint ownership aims specifically to secure land tenure for women, and helps women maintain control over their land.⁵

Land is a critical resource for a woman in the event of separation, divorce, abandonment, multiple marriage relationships or death of her husband. In both urban and rural settings, land ownership under these circumstances can mean the difference between dependence on family



support and the ability to form a viable, self-reliant, female-headed household.⁶ It should be noted that joint ownership is not in itself an answer to gendered obstacles, but it is an important strategy to ensure that the process of formalising land ownership does not unwittingly produce gender-discriminatory effects.

4 Sar, Sovann and Franz-Volker Mueller. "Experiences of land management in Cambodia." Presented at the international conference "Policy Meets Land Management: Contributions to the Achievements of the MDGs." April 17-18, 2008, Munich, Germany.

5 Agrawal, Nisha, Dzung The Nguyen and Hoa Thi Mong Pham. "Promising approaches in engendering development, land use rights and gender equality in Vietnam." 2002.

6 Brown, Jennifer and Firliana Purwanti. "Registration of Land and Women's Land Rights on Java: Why so many married couples register marital property in the name of one spouse and what has been the impact on women's land rights." Rural Development Institute, 2002.

Despite efforts of the RGC to incorporate gender perspectives into land reform laws and policies, there are concerns about the implementation of these efforts.⁷ According to a gender assessment carried out by USAID, “the confusion and costs associated with certifying ownership rights have had a negative impact on women’s land rights, especially for female-headed households.” Limited understanding among women of the law and the registration process may hinder their active engagement, and poses challenges for women in defending their access rights.⁸ This is further exacerbated by inconsistent approaches applied by local authorities and land registration officers, due to their limited understanding of procedural guidelines.

This study looks into systematic land registration with a focus on joint ownership by describing cases of separation, divorce and abandonment that occurred prior to land registration. Through the



voices of the interviewed women, the study brings attention to the issues of domestic violence and multiple marriages, and highlights the relevance of these issues to women’s access to land. Inconsistencies in the implementation of the land registration process and challenges relating to women’s access to justice are also reviewed briefly. The study concludes with recommendations for further discussion and research on the subject.

7 “Gender analysis and assessment.” USAID Cambodia, March 2006.

8 Concluding comments of the Committee on the Elimination of Discrimination Against Women, Cambodia, February 2006.

The study included both a desk review and field interviews. The literature reviewed for this study consisted of legislation, regulations, adjudication guidelines and related documents and reports. A limited number of interviews were conducted with key agencies that have been involved in the systematic land registration process and are thus familiar with the issues. The fieldwork component of this study took 12 days, and began with ten individual interviews with local authorities, male and female commune councillors and respective land registration officers. These interviews identified female heads of household in their communities who are divorced, separated or have been abandoned. From among these, women who have participated in systematic land registration were selected for interviews. In total, the researchers conducted semi-structured interviews with 36 women. The semi-structured interviews were further supplemented with findings from four focus group discussions that were carried out with a broader representation of women from the targeted communes. As the study's intent was to provide insight into women's perspectives on the land registration process, the researchers were intentionally biased in selecting only female interviewees.

The study took place in two provinces: Kampong Thom and Kandal. The selection criteria for the two provinces were based on the dynamics of the land registration process (as indicated through previous reports)

along with the comparative economic situation of the two provinces. Both provinces have advanced far in the systematic land registration process. However, Kampong Thom province has very high levels of poverty, while Kandal province is more prosperous due to its close proximity to the urban capital of Phnom Penh.

Within the two provinces, five communes were selected: Tipou, Prey Kuy and Sra Yov in Kampong Thom province, and Kouk Trap and Trapeang Veang in Kandal province. The selection criteria for the communes were based on the distance to major roads; the number of land parcels registered (within the commune); the number of female-headed households and the female literacy rate.⁹ Tipou commune in Kampong Thom province was selected for comparison purposes as systematic land registration has not yet begun in some of its villages.

This report is presented in a case study format, illustrating experiences, challenges and opportunities as perceived by the women who were interviewed, their communities and the local authorities. The format allows the individual stories to speak for themselves, but is supplemented by brief analysis and commentary from the authors.



9 To have a balanced overview, the study selected communes located close to a main road (within 2 kilometers) and communes in more remote locations (more than 10 kilometers from a main road). In all selected communes a large number of land parcels had already been registered.

The systematic land registration process in Cambodia is still in its early stages. Although a number of studies have been carried out on land management and the land registration process, the gender dimension of the subject has not yet been studied adequately. As a result, this study is limited by a lack of available literature on gender



and land in Cambodia. More importantly, the current debate on land issues is complex and involves a variety of positions that could not be explored within this study's limited scope.

The findings and recommendations of this study must therefore be considered within the context described above. The study design was based on qualitative analysis of case studies and a review of

the very limited data and research carried out to date. Thus, the study makes no claims of being representative of the overall situation.

4.1 Systematic land registration in cases of separation, divorce and abandonment

Ask any rural Cambodian what she or he considers to be the foundation of life. The answer is likely to be “land.” As in many other places in the world, land is livelihood. Land is security. Land is rootedness and stability.¹⁰ In concrete economic terms land is a source of income from cash crops, rental or outright sale. Land can further serve as collateral for credit, which can be used for consumption or investment purposes. However, women may not benefit from this economic potential if



their land ownership rights are not formally recognised. Only individual or joint ownership can ensure that women have access to, and control over, their land. Women’s ownership of land impacts on intra-household decision-making and on women’s overall role in the household economy.¹¹

10 Guttal, Shalmali. “Land and natural resource alienation.” December 2006.

11 Fujita, Yayoi. “Women’s access and rights to land in Cambodia, Laos and Vietnam.” Scoping study on women’s access and rights to land for the Rural Poverty and Environment Program Initiative, International Development Research Centre, October 2006.

Land is a particularly critical resource for women when their households break down. Over one quarter of Cambodian households are female-headed households. Some of these are headed by women who are widows, others are divorced, separated or have been abandoned by their husbands.¹² Female heads of household are more often found in the agricultural sector than their male counterparts; they tend to have smaller plots of land and are more susceptible to losing their land.¹³ According to CDRI's recent survey, 34 percent of female-headed households own less than half a hectare of agricultural land, compared to 18 percent of male-headed households. Conversely, almost one third of households headed by men own more than 2 hectares compared to only 17 percent of households headed by women.¹⁴



12 "Gender analysis and assessment." USAID Cambodia, March 2006.

13 Ibid.

14 "Cambodia land titling rural baseline survey report." Cambodia Development Resource Institute, December 2007.

Saro is a 47-year old woman with five children. Her husband left her 13 years ago, when she was 7 months pregnant, and never came back. Saro is the head of her household and works as a rice farmer. The land that was given to her by the state is the main source of livelihood for her and her children. She began her story by recounting her recent difficulties: "Because of the flood I didn't have a harvest this year. Life is very hard but I'm doing my best to raise my children."

A discussion of her ups and downs in life, which she experiences as a head of household, a farmer, a mother and a woman, led to the subject of land ownership. Saro attended the land registration meeting in her community but could not remember the concept of joint land ownership. But she was able to explain very well why it is important for women to have their names on land titles. "For me it is important. It is very important. I am the head of the household. I am taking care of five children. Land is my livelihood."

When asked in whose name her land is registered, she said that her name was the sole name on the ownership title. However, an examination of the title showed that the land had been registered jointly with her husband. Saro said that the land registration officer looked at the family book while she explained to him that her husband had left her many years ago. She never read the title until now. "I am shocked, they [the land registration officers] broke my trust. What if he [the husband] comes back and claims the land?"

The story of Saro was echoed in more than 15 cases of women who were interviewed by the authors. The women were under the impression that their lands had been registered in their names only, while their titles showed the names of the wives as well as the names of the [former] husbands.

The situation described above is exacerbated by low levels of education in Cambodia. According to data from the Ministry of Women's Affairs, 40 percent of women aged 25 to 44 are illiterate, compared to 25 percent of men in the same age group.¹⁵ In addition, lack of knowledge regarding laws and regulations as well as limited access to information places women in a vulnerable position. Divorced, separated or abandoned women are particularly vulnerable due to both social stigma and the economic hardships they face. They are often looked down upon and face challenges in accessing social networks and economic resources in the community.¹⁶ While some women who joined the land registration meetings in their communities were able to explain the concept of joint ownership and its application, most did not have a clear understanding of the subject, its importance or consequences. For women who are divorced, separated or had been abandoned by their husbands, it would have taken tremendous courage to raise their hands and ask for clarifications about land ownership of women in their particular circumstances. This was confirmed in all focus group discussions.



15 "A fair share for women: Cambodia gender assessment." Ministry of Women's Affairs, March 2008.

16 Surtees, Rebecca. "Negotiating violence and non-violence in Cambodian marriages." In *Gender, Development and Marriage*, Oxfam GB, 2003.

Nat is a 46-year old woman with five children whose husband left her over ten years ago. Besides working on the farm Nat also often travels to Siem Reap town to work as a cook. At the time of land registration she was asked to provide a supporting letter from the commune council to confirm her husband's abandonment. However, even with the letter, the village chief told her that only if her husband was dead could she be put as the sole owner on the land title. As he is alive, the official would follow [what he thought were] the rules and register the land jointly. "It is unfair," Nat said. "He destroyed lots of property before he left. He is a gambler and was always drunk. I told this to the land registration officers and argued to put my name and only my name, since he left me ten years ago. They said do not worry, everything will be fine."

According to the 2004 Land Adjudication Guideline, both separation (traditional divorce) and divorce are recognised in the process of systematic land registration.¹⁷ In cases of separation, local authorities at commune level should certify the separation in a document that is acknowledged by both parties and specifies a clear division of property. For divorces between spouses who have marriage certificates, a written decision from the court is necessary. Such documents (written agreement, court decision) should then be attached to the parcel form. The guideline also states that in case of absence of any of the above-mentioned documents, a certification from commune authorities should be requested by land registration officers.

17 "The traditional divorce is the most general one [...]. It can be recognized only if local authorities at commune level witness it and certify it in a document acknowledged by the parties and in which a clear repartition of properties is specified. For a divorce between spouses who had made a legal wedding document (wedding certificate by civil status authorities), it is necessary to have a decision from the court." Land Adjudication Guideline 2004: pg. 14.

Regarding informal separation or abandonment, which is very common in Cambodia, the Land Adjudication Guideline specifies that the land registration officer should record the land as the individual property of the spouse who has resided on and taken care of the land since the separation, even if the land was acquired in common. The guideline does not specify how long one has to be separated before land can be registered with the remaining spouse. The only temporal reference to separation is in the following example: "... land given by the State in 1984 and that [sic] the separation took place in 1988 or 1989."¹⁸ Although this example refers to a period of time between the purchase of land and separation, not the duration of separation, the example has been used for the interpretation that a minimum of four to five years is needed to recognise separation. However, neither laws nor guidelines state an explicit period, and so the decision is at the discretion of cadastral officers.

The Land Adjudication Guideline acknowledges two types of informal separation. The first type is separation in which both parties remain in the same village or are located

"I am worried but surprised and shocked. I am not going to give up and share my land with anyone. I just found out now that they actually registered it jointly."

Nat, Sra Yov commune, Kampong Thom province

in a place that allows them to see each other. The second type of separation is when parties either live far from each other or are unaware of each other's whereabouts. With the former, the guideline requires that a land registration officer should request a written agreement to be thumb-printed by both spouses and approved by the commune chief. In the case of the latter, the land registration officer should count on the testimony of the remaining spouse, which is to be supported by a letter from the commune chief.¹⁹

18 Land Adjudication Guideline 2004: pg. 15.

19 Ibid.

Through interviews with land registration officers and local authorities, the researchers learned that no one was familiar with the detailed procedures outlined in the Land Adjudication Guideline. However, everyone knew about the benefits of joint land ownership. As a result, land had been registered jointly, partly in violation of rules and procedures (with regard to cases of divorced, separated or abandoned women).

The lack of clarity among local authorities makes it difficult for divorced, separated and abandoned women to seek help regarding issues of land ownership, as demonstrated by the following statement from a commune chief in Kampong Thom province: “Even if the husband left but the land was bought during the marriage, we need to register the land jointly. If a woman insists that the land should be registered only under her name we need a court decision. In the case of the death of the husband we can provide the woman with a letter from the commune council.” Another land registration officer acknowledged that he and his colleagues had learned about the five-year definition of final separation, divorce or abandonment only one month prior to this study. He confirmed that separation cases had been registered as joint ownership and commented: “This is a big headache for us; we need to have clear instructions on how to register land in cases of separation”.

“They told me the land was registered in a way that it only belongs to me and my children. I provided the land registration officers with a letter from the commune council that confirmed the separation. Now I am finding out the land has been registered as joint property with my husband. I don’t understand this. He left me 15 years ago.”

Noam, Prey Kuy commune, Kampong Thom province.

Most women interviewed did not understand the difference between divorce in a legally registered marriage and an agreement between parties to dissolve traditional marriage (separation). Some women

who had worked out agreements at the commune level spoke of their ‘divorce’ while most considered themselves as ‘widows.’ It should be noted that among all the cases reviewed by the researchers there were no instances of an official court decision for a divorce, even in cases of legally registered marriages. Furthermore, it was only at the time of systematic land registration that the women were first made aware of the existence of formal documents that can confirm marital status in cases of separation, divorce or abandonment.



How can rural women retain and protect their land rights in a situation where even the local authorities are unclear of the registration procedures in cases of divorce, separation or abandonment? In all cases encountered in this study, the women were the

ones responsible for raising their children and looking after their households. Land is often the only asset they have. This situation raises the question of whether systematic land registration as currently implemented benefits separated, divorced or abandoned women in the way in which it was designed. It is already questionable whether women, particularly in rural areas, have the knowledge and resources to take an active role in obtaining all required documents on their own. But even in cases encountered by the authors where women who were illiterate and poor had gone to great lengths to present the necessary documents, they found them rejected by land registration officers due to confusions about procedures.

Noeu is a 46-year old illiterate farmer with four children. Her husband left her almost seven years ago. It was only last year that he came to visit the children. “It would have been better if the land title was only in my name but the land people said that this was the way and I accepted it. At the time of land registration it was already five years since he had left. I am now worried. What if I want to sell the land or deposit it for a loan? How am I supposed to find my husband and ask for his permission? I think in the end the husband will get it, he is a man. It is not fair. I am the one who stayed and raised the children.”

Some of the women interviewed indicated that they would have been better off without a land title.²⁰ They felt that under the informal system of the past there were fewer obstacles. Now, with the former husband’s name on the title, the women are worried about being able to sell their land, or the complication of any future claims made by either the former husband himself or by any of his children from other marriages. Instead of providing security to the women, the joint registration process perpetuates their dependency on their former husbands, even

long after they had separated. Ironically, these women are now disadvantaged due to a policy that was initially put in place to support them.



20 This statement refers only to women who were divorced, separated or abandoned.

4.2 Domestic violence & multiple marriages

The subject of domestic violence came up in every discussion with the women who participated in this study. Domestic violence was not part of the initial scope of this study, but during the course of the fieldwork it became clear that the issue takes a heavy toll on Cambodian families, especially women, and it must be taken into consideration when looking at the situation of women in the process of systematic land registration. Nearly a quarter of Cambodian women, 20-25 percent, report that they have experienced some form of violence from their husbands.²¹ The stories of the women recorded for this study revealed linkages between broader issues of empowerment, bargaining power, domestic violence, access to justice and systematic land registration. Questions were also raised by women and local authorities about procedures that should be followed for land registration in cases of multiple marriages.

In a focus group discussion with a group of community women, everyone agreed that joint ownership provides protection to women in cases of separation, divorce or abandonment and that women's rights of land ownership can no longer be disregarded. The women who spoke with the authors had nothing but praise and admiration for the policy on joint ownership. "Sometimes men can lose our land when they are gambling and drinking. Now everybody knows if my name is on the title, so he can not use it." Most of the participants in the focus group discussions agreed that joint land ownership increases significantly the bargaining power of women in household decision-making. "Before systematic land registration, men in the village sold the land easily without informing their wives. But now, because of joint ownership, it is not that easy." At the same time, however, the women expressed their concerns over their limited knowledge of the

21 "A fair share for women: Cambodia gender assessment." Ministry of Women's Affairs, March 2008.

formal practice of dividing land assets in cases of separation or divorce. Among other issues expressed by the women was the fear that some women would decide to remain in an abusive relationship in order to avoid losing land to their husbands due to limited confidence and resources in accessing the formal legal system. This issue was present long before people even possessed land titles. However, the systematic land registration process has introduced procedures and formalities that may not be known or accessible to many of these women.

Thavy is a 35-year old woman with four children who works at the local factory. Thavy was given land by her parents that is now in the process of being registered through systematic land registration in Kandal province. Over the course of the past ten years Thavy experienced an abusive relationship. “When he needed money he put a knife to my neck until I gave it to him. Finally I decided to move and stay with my mother but he still comes and makes a lot of noise.” Thavy plans to register her land under her mother’s name because she fears that if it is in her name she will be forced to sell it for money, due to intimidation and threats by her husband. “He is now living on the land which was given to me by my parents. If I register it under my name, I will never be able to get it back.” Thavy contacted the commune council to seek the council’s support for her divorce or separation, but due to the husband’s unwillingness the matter seems out of the hand of local authorities.

Commune councils and other local authorities are only able to help parties to solve their problems if there is mutual agreement. This is because local authorities are part of the executive branch of government and have no influence over judicial matters. The Cambodian Constitution specifically restricts adjudication by any branch of government other than the judicial branch. Unfortunately,

the reality of many Cambodian rural women denies them access to the legal system, let alone access to justice. Factors such as financial cost, distance to the local court, lack of representation and gender bias among civil servants present major obstacles for women's realisation of their rightful claims.

Chin Srey Leap, a 39-year old mother with one child, works at a factory in Kandal province. Srey Leap and her husband bought their land together over a year ago, just before he left her for another woman. During the course of their marriage Srey Leap suffered from abuse and so she was happy when her husband agreed to sign the separation agreement, which also indicated that the land belongs to her. At this time the process of land registration had just begun. Two weeks prior to the interview, all of Srey Leap's documents were stolen from her house by her husband while she was away at work, including the letter of land transfer. This incident was followed by a threatening phone call in which her husband told her that she cannot be the owner of the land. "I worked so hard and took a loan so I could build a house on this land. Now I am worried about what will happen to me and my daughter if the land is registered jointly or even under his name. I am the one who is paying back the loan and raising our child." Srey Leap is also worried that she may not be able to win this battle before the systematic land registration process is complete as her husband knows many people at the district level and is close with the commune council members.

Will Srey Leap benefit from systematic land registration or will it hinder her? Her story and the many other stories mentioned in this report illustrate the importance of understanding gender barriers in Cambodian society and the challenges women face in accessing justice. The issue of access to justice is especially important because the process of systematic land registration formalises ownership of one of the most

important productive factors women have—their land. This is an issue that cannot be solved only by the parties involved in systematic land registration. However, clear instructions as well as gender sensitisation of the land registration process can assist them in avoiding unintended harm. Any policy design has to look beyond its immediate expected outputs and try to predict any indirect, negative impacts on specific groups of stakeholders.

The authors met Sokha at a local school, rather than at her home, as she was not prepared to share her story with her husband around. Sokha is 50 years old and has four children. Like other women involved in this study, Sokha's land tenure is challenged by her husband's multiple marriages.²² Sokha's husband is married to another woman who lives in a different commune. But this is not her main concern. "My husband bought land in another commune with my money. I have all the receipts to prove this claim. He claims the land should be registered only under his name. He told me that he will return my money after he sells the land. I am worried what will happen if he registers my land as joint property with his other wife. I called the commune chief of that commune and informed her of my situation. She promised she would look into it. After 30 years of marriage I am trying to get a marriage certificate so that I will be able to claim my rights. But what if he has already registered the second marriage? Will it mean that my marriage is not legal?"

We followed Sokha's story and travelled to the commune where the other wife lives, and there met with the local authorities. The commune chief informed us that the land had already been registered jointly with another woman. The commune chief told the authors that she was not sure how to break the news to Sokha.

22 Ten out of 36 cases in the study involved multiple marriages.

In a village in Kampong Thom province we gathered in a small house to hear the stories of four women whose husbands all have other wives. As first wives, all the women had jointly registered land with their husbands. With such fragile marriages, for which they do not hold marriage certificates, all expressed relief in having their names on their land titles. However, even with this relief, they are concerned that one day the children fathered by their husbands in another marriage may make a claim for their share. “I always think what if something happens to my husband? What if his second wife claims part of my land on behalf of her children? I have five children of my own. I was not thinking of these things before land registration.”²³

The relevant Cambodian law governing property-related matters and family relations is the Civil Code, adopted in 2007.²⁴ The Civil Code succeeds the Family Law of 1989, which served as the basis for many of the legal interpretations in the Land Adjudication Guideline. Article 1268 of the Civil Code states that if property has been jointly acquired during marriage, the surviving spouse will have precedence over other co-successors to obtain the decedent’s share of such jointly owned property. Although the Cambodian Civil Code prohibits multiple marriages, it accepts the acknowledgement of a child from a non-marital relationship. It is unclear, however, whether a child from a non-marital relationship who was acknowledged by her father can have any rights to her father’s share of property that had been jointly acquired with a former wife. Further analysis of the Civil Code and other relevant laws is needed to fully understand the land rights of women in separated relationships or women whose husbands are involved in multiple marriages.

“My husband has land that is registered with his first wife. I don’t want it. All I want is for him to help me raise our son.”

Mon Simot, Kouk Trap commune, Kandal province

23 Naem, Prey Kuy commune, Kampong Thom province.

24 Except where regulations are provided by special laws such as the 2001 Land Law.

All women interviewed in this study were aware of the fact that multiple marriages are illegal. But none are ready to file a complaint or take any action against their husbands. In their view they are handling all the difficulties of their situation as best as they can. Sen, one of the women interviewed for this study, described her situation poignantly: “I am a man in my family but I am a woman.”

Among all the women whose husbands are involved in multiple marriages there was a strong consensus that any land purchased after their marriage (the first marriage) should be jointly registered with the first wife. This issue adds another challenge to the process of systematic land registration, one that requires a practical solution. Policy makers need to explore what mechanisms should be adopted to ensure the protection of the rights of women who are tied in polygamous relationships.

4.3 Inconsistencies in the application of joint land registration

In eight of the 36 cases of women interviewed for this study, the results of the land registration process showed inconsistencies. There were two main types of inconsistencies noted by the research team. In the first instance, land that women inherited from their parents had been registered (without their knowledge or consent) jointly with the husbands from whom they had separated long time ago. The second type of inconsistency related to cases of separated, divorced or abandoned women who own multiple plots of land and have found that the plots had not been registered in a consistent manner. Some plots had been incorrectly registered jointly with their former husbands, while other plots were registered correctly under their own name (as individual property). The following two stories illustrate the first inconsistency in the application of joint land registration.

Mak, who earns less than a dollar a day, lives with her only son in a small village in Kampong Thom province. Her husband left her almost 14 years ago. Mak inherited her land from her parents. She could not explain what joint ownership means or the consequences of joint registration. “No one asked me to get a letter from the commune council. They looked at my family book and I explained the story of my life.” When Mak presented us with her land title, it showed that her land had been registered jointly. “It would have been good if the registration was only in my name. But I don’t worry. Everybody knows this land is my land.”

Also in Kampong Thom province we met Mom, a 39-year old woman with a small plot of farmland she inherited from her parents. “The land people told me to put my former husband’s name in the title so that my second husband could not claim anything.”

The second type of inconsistency is illustrated in the following cases of women with multiple land holdings. One woman (who asked that her name not be revealed) showed us six land titles, three of which were registered jointly with her former husband who had left her 20 years ago. The other three had been correctly registered under her name. “My daughter had joined the registration meeting with the land registration officers and explained to them to only put my name. We never looked at the titles until now.”

Story such as this was repeated in other cases. In some cases the largest and most valuable plot had been registered jointly, while the smaller plots had been registered under the name of the woman. Saru’s case is one such example.

Saru is a mother of two who runs a small shop. Her husband left her for another woman eight years ago. Her largest plot of land, which had been given to her by her brother, had been registered jointly with her former husband. "When I was given the land titles I asked them why his name was written in one of the titles. I questioned them many times, but they said no problem, trust us."

Another woman in a separated relationship with no formal marriage certificate was asked to provide a written court decision before her land could be registered under her name. In most other cases the women were only requested to provide a letter from the local authorities. But even if the women obtained a letter from local authorities, it was often ignored, as told by a woman from Kandal province who requested to remain anonymous: "My husband left me and our three children in 1999. In 2006, for the purpose of land registration, the commune council provided me with a separation letter confirming my marital status. The separation letter was not accepted and the land registration officer told me that I should obtain a court decision. He also requested an ownership transfer letter containing my husband's fingerprint. I am not sure how to do this."

The inconsistencies reported by the women were confirmed in interviews with local authorities and land registration officers. In several instances the land registration officers and commune councillors had different opinions about the application of the given procedural guidelines. Some expressed that the reason for registering the largest plot of land jointly with the former husband was to protect the land so that the couple's children may benefit one day. These personal interpretations indicate the cultural gender construct,

which does not view women as capable enough to control productive assets. Although women in Cambodia are nominally guaranteed equal rights with men, the ability to claim these rights is subject to prevailing social ideals and attitudes about power and gender relations. Perceptions of gender identity, especially the female gender identity, are closely linked to notions of “culture” and “tradition,” and resistance to change in gender relations is often strong. In this social order, women are considered to be of lower status relative to men, though the status of an individual is also determined by her/his age and other characteristics, including wealth. For women, status is also determined by marital status and children.²⁵

Some land registration officers who were interviewed explained that the complications related to cases of separation, divorce or abandonment and the related inconsistencies in land registration occur due to a lack of practical guidelines. Two such officers indicated that in the absence of a guideline they merely try their best to be fair and look out for the children’s interests. One such officer expressed a need for short and clear instruction on these subjects.

Overall, interviews with local authorities and land registration officers gave the impression that joint ownership was viewed as a policy that was developed to protect women, children and families. However, it was clear that officials lacked detailed knowledge on how the application of this policy would impact on individual cases. This finding illustrates the importance of equipping land registration officers and local authorities with the necessary sensitivities and tools to ensure that women’s rights to land are protected as best as possible through the systematic land registration process, especially in determinations of whether land should be registered as jointly owned or as individual property.

25 Gorman, Siobhan, Pon Darina and Sok Kheng, “Gender and development in Cambodia: An overview.” Cambodia Development Resource Institute Working Paper 10, June 1999.

In almost all focus group discussions and interviews the notion of joint land ownership was praised and valued as a family unifying policy. Having said this, a number of issues about inconsistencies in the implementation of the land registration process were raised by discussants and interviewees, issues that should be considered as an entry point for further in-depth discussion on the subject.

The issue is not one of statistics, and how common these cases are, but rather one of ensuring that the process fulfils the stated objectives of the RGC to ensure the protection of women's rights in the process of land reform. This study indicates that monitoring of this



process requires attention to the specific needs and circumstances of different groups of land holders, such as divorced, separated and abandoned women. It also requires specific attention to the barriers that many women face in understanding their rights and obligations,

in short – in accessing justice. Both quantitative and qualitative results need to inform the monitoring of the systematic land registration process.

The following is a list of recommendations to consider by policy makers:²⁶

Recommendation 1:

The section of the Land Adjudication Guideline that explains the procedures to follow in cases of separation, divorce or abandonment should be revised as follows: a) the procedures should be simplified and shortened, b) the procedures should be broken down into clear steps, which should be illustrated by case examples, c) the simplified guidelines should be developed into handouts and disseminated among all stakeholders and d) the simplified guidelines and handouts should be shared with land registration officers and relevant authorities through training sessions. The last step can be carried out as refresher training under ongoing capacity development activities of the MLMUPC, and can also be included in the training materials for the second phase of the systematic land registration programme, which will be implemented in four new provinces.

Recommendation 2:

Procedures should be put in place to ensure women's full access to information on the process of systematic land registration, its importance and its impact on their lives. When conducting meetings on the land registration process, factors affecting women's participation should be considered, such as the time of day for holding meetings, the need to organise separate meetings for women,

26 The authors are thankful for the comments and suggestions provided by individuals who participated in a presentation of preliminary results at the GAD/C office on July 28, 2008. Their comments helped shape the following recommendations.

or the need for communication tools that are appropriate for people with low literacy levels (tools such as role plays, educational films, posters, simplified flyers, etc.). Targeted communication strategies and methods should be developed and applied to ensure that all individuals (women included) can participate in land registration meetings and the overall land registration process.

Recommendation 3:

Gender concerns can be realised and addressed through the development of a gender sensitive monitoring and evaluation plan, which should be incorporated into MLMUPC's and LMAP's existing monitoring and evaluation system. Particular attention should be paid to the decision-making of married couples over whether inherited property should be registered as jointly or individually owned land – an issue that was not addressed in this study.

Recommendation 4:

A set of activities and indicators should be developed in order to mainstream gender into LMAP. This should be integrated into the current MLMUPC's Gender Mainstreaming Action Plan (GMAP). The MLMUPC's Gender Mainstreaming Action Group (GMAG) should be provided with both technical and financial support in order to lead, monitor and implement the process.

Recommendation 5:

The issues raised in this report should inform the drafting process of the Comprehensive Land Policy, the so-called "White Paper," which is coordinated by the Council of Land Policy.

Recommendation 6:

A mechanism for greater engagement and involvement of the Ministry of Women's Affairs (MOWA) and women's organisations should be adopted by MLMUPC and its development partners. MOWA is particularly well-placed to share the issues presented in this report with a wide group of government stakeholders in the Technical Working Group on Gender. Both women's organisations and MOWA can play an important role in raising awareness among women's issues activists as well as sharing information on the challenges and possible solutions relating to the land registration process with male and female commune councillors and land registration officers. Existing networks such as the Committee to Promote Women in Politics (CPWP), Female Commune Councillors Forum (FCCF), Women's Empowerment through Legal Awareness (WELA), GADNet and NGO CEDAW shall be used as platforms for dialogue and information dissemination.

Recommendation 7:

Women's organisations and other civil society actors should be better equipped with specific legal knowledge in order to provide legal aid in issues related to land registration and gender. This requires a review and harmonisation of the interpretation of laws related to domestic violence, multiple marriages, divorce, separation and formalisation of land ownership rights. International agencies can play an important role in supporting such capacity development activities.

Recommendation 8:

Findings of this report should be discussed and integrated into ongoing initiatives related to alternative dispute resolution and legal support for women, such as the recently established "justice houses" and the "community conversation" programme supported by UNDP.

Recommendation 9:

Due to the limitations of time, scope and methodology, this study could not cover all issues related to women’s perspectives on the land reform process. Further research with a wider scope and a larger sample size is required and strongly recommended. A follow-up study should also include the urban context and pay attention to the development of land markets as factors in the recognition of women’s land tenure. Issues raised in this report should help strengthen gender analysis in ongoing studies relating to the land reform process in Cambodia, such as the long-term monitoring of the social and economic impacts of systematic land registration and the “Moving Out of Poverty Study,” both initiated by the Cambodia Development Resource Institute (CDRI).



