

The Failure of Implementation of Land Legislations Is a Root Cause of Land Disputes in Cambodia: Case Studies of Beoung Kak Lake and Kampong Speu Sugar Company

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Abstract

Land is a fundamental resource for majority of Cambodian households to generate income and food security. However, recently land has become a hot issue for which land disputes have been risen up rapidly nationwide; yet effective mechanisms have not been reached. The purpose of this paper is to analyse and find the causes of land disputes in Cambodia which mainly focuses on the implementation of land legislations. Methodologically, literature review and case studies are used to produce information for this study. The study revealed that the root cause of land disputes is basically from the failure of government in implementing land legislations while government himself also violates various areas of laws and regulations as proved in case studies. The failure of enforcing land legislations has not only led to land disputes but also has pushed affected households into chronic poverty. Therefore, land legislations shall be effectively enforced whereas social and economic development shall benefit to all rather than a few while any impacts of development on communities shall be fairly compensated and relocated in advance.

Key words: *Cambodia, land dispute, failure, implementation, land legislation*

Introduction

Cambodia reintroduced private property rights to land in 1989 and then the 1992 Land Law was enacted, as well as Sub-Decree No.25 which recreated the notion of private ownership for individuals. In addition, the 1993 Constitution was also adopted to which private ownership was also fully recognized and protected. The 1992 Land Law had shown the weakness and had no longer been compatible with the 1993 Constitution so that a new 2001 Land Law was enacted accompanied by several sub-decrees in order to effectively implement land management in Cambodia. Since 1989, approximately 180 laws and legal regulations have been available for land management in Cambodia; however, a number of land disputes and forced evictions did not decrease but on the contrary augmented largely leading half million of people to poverty and landlessness (Phalthy H., 2010 p118; Licadho, 2014; Laurent K., 2012, p7). Poor legal dissemination is a failure for the implementation of laws and legal regulations exacerbating entire legal system of the country. Additionally, lack of legal knowledge base of local authorities and people is also hard for them to acknowledge the wrongdoings.

Methods

The main purpose of this paper is to discuss and analyse a root cause of land disputes in Cambodia, basically focus on government implementation on land legislations. The secondary data is used and reviewed for this study where it is selectively collected from various sources such as government bodies, NGOs and online

source as well. The two case studies are also brought to discuss and prove the failure of government in implementing land legislations which could cause land disputes and impoverish local livelihoods.

Literature Review

Both 1993 Constitution and 2001 Land Law recognize right to ownership of private land and the deprivation of private properties shall be in public interest and carried out after a fair and just compensation; but in reality, the private properties were deprived for private companies or investors rather than public interest while property owners were forced to leave or accept the unjust compensation. Under 2001 Land Law article 49, the government can grant State private land to Cambodian landless people through Social Land Concessions (SLCs) and to private company through Economic Land Concessions (ELCs) for development of land and for economic and social purposes. To implement this article, the government signed and issued a sub-decree No 118 ANKr/BK on State Land Management, a sub-decree No.146 ANKr/BK on Economic Land Concessions, and a sub-decree No.19 ANKr/BK on Social Land Concessions. Concerning to the conditions of SCLs, the land shall be granted to the poor, displaced families, demobilized or disabled soldiers, female headed family, and families suffering from natural disaster for residential and family farming purposes; but due to poor land management, some NGOs pointed out that the granting of SLCs has led to disputes, corruption, violence, and abuses (Adhoc, 2013). For Economic Land Concessions, government can grant State private land to private company a maximum of 10,000 ha (art 59) within a maximum duration of 99-year contact (art 61) under the purposes of socio-economic development and improvement of agro-industrial products. The grant of ELCs greater than those authorized in favor of one specific person or several legal entities controlled by the same natural persons is prohibited (art59). In spite of the fact that several companies and natural persons have been granted surface area greater than law permits, the government failed to fulfill the requirements as stated in article 4 of sub-decree No.146 ANKr/BK which emphasizes that ELCs may be leased only if: 1) land has been registered and classified as State private land; 2) land use planning has been adopted by provincial or municipal State Land Management Committee; 3) Environmental and Social Impact Assessments (ESIA). It is fact that land of the whole country has not yet registered and classified completely between State public and State private land, collective and private land, but the government has already granted land concessions at least 2,657,470 ha as of late December 2012, which have affected 47,342 families and other 768,862 families may also be affected in the future (Andreas & Siphath, 2012; Adhoc, 2013). In addition the government also granted State public land and protected areas where are prohibited by article 16 of the 2001 Land Law such as Boeung Kak Lake to private company while the State public properties can be granted unless it has lost its public interest use and after those properties have been reclassified as State private properties under the Law on Reclassification of State public properties to State private properties (2001 Land Law art.16). Despite the Law on Reclassification of State public properties to State private properties does not exist; instead, the government signed and issued a sub-decree No 129 ANKr/BK on the Rules and Procedures on Reclassification State Public Property and Public Entities in 2006 to reclassify State public properties to State private properties. Meanwhile, the government himself still failed to abide by this sub-decree as stated in article 16 that the leasing must not damage and change the function of the properties where duration of the lease must not exceed 15 years as stated in article 18. But, for example, Boeung Kak Lake has been granted 99 years to private company where 90 % of the lake was filled in by sand that is said the lake has totally been changed its functions. The government also systematically fails to conduct ESIA and consultation with local residents and affected people before granting ELCs where people living in the concession zones are generally ignorant of even basic information about the concessions—their specific boundaries, area, duration, the companies involved, the intended use of the land (Adhoc, 2013). It is also rarely seen the government or company paid fair and just compensation to affected people in advance as stated in the 1993 Constitution and 2001 Land Law, but

generally the government or company forced affected people to leave their land with unjust compensation which is below the market price while some affected families were even excluded from compensation (Laurent K., 2012). Once again, the evictees may grant a plot of land to resettle to where is far from their previous home and land which is not sufficient social facilities such as electricity, water supply, health center, road, school and market (HRN, 2012). On the other hands, the affected people of land disputes with powerful or well-connected individuals with government are generally hard to access to justice as the court shows its favor to those powerful business tycoons (Adhoc, 2013; Laurent K., 2012, HRN, 2012).

Case Studies and Discussion

Case No.1 Boeung Kak Lake

Background of the Case

Boeung Kak Lake (BKL) is situated in the north of the capital city of Phnom Penh surrounded by nine villages with more than 4, 000 families (Ee Sarom, 2012). The lake has the area of 90 ha surrounded with residential area, commercial activities, restaurants, hotels, embassies, universities, hospitals, banks and train station. It is a largest lake left in capital which shares a historical significance for environment and a natural reservoir for excess rainwater during monsoon season in the city.

On February 6, 2007 the Municipality of Phnom Penh (MPP) announced that it had granted a 99 years lease for US\$79,002,000 at US\$0.60/sqm /year to private developer Shukaku Inc headed by an influential businessman and a senator from ruling party, Lao Meng Khin, for development of 133 ha of BKL area including 90 ha of lake. The company will develop the area into “luxurious, commercial, and service places,” including by filling in 90 percent of the lake. There is another Chinese firm Erdos Hong Jun Investment Co., Ltd from Inner Mongolia was making a joint venture company with Shukaku Inc in December 2010 in order to develop Boeung Kak into a high-end residential, commercial and tourism complex. Most of households in BKL area had been recognized by local authorities since 1990s through informal tenure system, in which they had received issuance of house number, family book, birth certificate, infrastructure constructions, and official document of land sale contracts (Laurent K., 2012, p26). Had the process of land adjudication and registration been conducted based on laws, the households around the lake would have had rights to claim their legal possession, and thus to formal title. Instead, the authorities told residents that they could not issue titles in the area because it was “a development area”, and many families were immediately alleged as illegal squatters on State land and thus they were deprived from the land titling process and blocked from claiming their legitimate entitlements. According to the lease agreement, there are 4,252 families affected from this development project and the MPP forced the residents of BKL to leave their homes, and only those who can show documents of ownership had been offered compensation. The MPP is offering affected families in three choices of compensation, which are: i) relocation to Damnak Trayoeng, a government-approved resettlement site located twenty kilometers away from the city. ii) Payment of compensation for 33, 500,000 riel (= \$8,500 US); and iii) access to alternative housing that will be build around new Boeung Kak lakeshore (Chi M. and Rijie E. Gao, 2010, p52). The affected families did not accept any of the offerings because the first choice of resettlement is 20 Km far away from city where there is not sufficient infrastructure, electricity, water supply, school, healthcare service and market. The second choice was below the fair market price of land and house that could lead them to be unaffordable for new settlement. Whereas, the third choice MPP allowed households to stay at current location for 4 years and pay US\$0.64/day/family for four years as a deposit amount to company, 7NG Construction, who proposed this plan to MPP. After four years, the families will move to new houses and continue to pay an additional US\$0.42/day/family for six years and subsequently get the ownership

of house. The total cost of the new house will therefore be about US\$1,854 measured in 2007 prices, but there is no detail information available about the housing lots. The affected families refused and started to protest against authorities and company though they did not get any result but injured.

On August 26, 2008 Shukaku Inc. contractor started to pump sand into lake which caused homes on and around BKL flooded and uninhabitable; yet the company did not pay compensation to evictees. Not only homes, but their properties were also destroyed because the resident did not receive advance notice about pumping and what will happen to the displaced residents (Chi M. & Rije E.Gao, 2010). On behalf of BKL residents, Center on Housing Rights and Evictions (COHRE) in collaboration with a lawyer pursued a court case. Due to corruption in judicial system; they did not believe their complaint would be succeeded but they had to challenge in attempt to show that victims and legal community would fight for their rights. As a result, on September 22, 2008 Phnom Penh Municipal Court refused an application submitted by BKL residents for an injunction to stop pumping sand into lake. The attorney with COHRE appealed the decision to deny the injunction, but the Court of Appeal dismissed the complaint on December 25, 2008 (Chi M. & Rije E.Gao, 2010, p17). After MPP granted lake to Shukaku Inc.; though, some families were forcibly accepted compensation of US\$8,500 and left for new resettlements, but around 1000 families have not accepted and protested everywhere in Phnom Penh to request for an on-site development with individual's plot of land. The protestors were constantly threatened, beaten, injured, detained, and even some imprisoned. Almost four years of bittersweet of protesting, BKL residents' voice has been worldwide aired and reported. Finally, World Bank, which financed land management project, became aware of alarming situation of BKL and made its decision on August 9, 2011 to freeze funds for Cambodia over eviction of BKL residents and the funds would be renewed after resolution reached. Just two days later, on August 11, 2011, Prime Minister Hun Sen issued a Sub-decree No.183 ANKr/BK to reserve 12.44 ha from Boeung Kak Lake Development Area for on-site relocation of BKL residents. Since receiving the Sub-decree, the MPP failed to set land demarcation and boundary for BKL households of 794 families; yet they have made some obstacles and excluded 70 families from 12.44 ha due to these families living out of concession area though there was a study in 2012 by Sahmakum Teang Tnaut proved that the excluded families could be given a vacant plot within 12.44 ha (STT, 2012). Besides the fact that lake dispute has not completely resolved and recently around 60 families are waiting for land title within 12.44 ha; the 7 years of dispute has impoverished affected families. The BKL residents have not only lost their homes and lands, but they also have lost their family income; meanwhile, the displaced families are being suffered from food insecurity, income loss and increase in debts.

2 Legal Discussions

Under the 1993 Cambodian Constitution and the 2001 Land Law, Cambodian people have rights to own land. The individuals may only be deprived of ownership when expropriation is for public interest and only with appropriate and fair compensation in advance, as decided by a court with due process of law. Article 3 of 2001 Land Law states that all persons shall respect the property of the State and legally acquired private property. Meanwhile, article 30 of this law offers any person who, for no less than five year prior to the adoption of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed and has the right to request a definitive title of ownership. BKL residents have not only lived longer, since 1980s and 1990s, than the law stated, but they also have been recognized by the local authorities and have a thumb printed documentation of residency or document of purchase of land which can proved that BKL residents were legally obtained private property right to their land; instead, they have been subject to deprive their rights from home and land.

Under article 58 of Cambodian Constitution lakes are State public property. Likewise, article 15 of 2001 Land Law, water bodies, lakes, rivers, mountains and alike are considered as State public property. Hence, BKL is also a State public property, where article 16 of the 2001 Land Law emphasizes that State public property is inalienable unless those properties lose their public interest use. The transformation of State public property to State private property must be done by law on Reclassification. It is fact that Cambodia does not have this Law so far, where BKL still serves significantly for public interest use. Furthermore, article 4 of Sub-decree on State Land Management No.118 ANKr/BK ensures property with a “natural origin,” —such as natural lakes—as State public property, since such property has a public interest use. BKL also protects property with natural origin and property around BKL including parks, public schools and Muslim mosque are similarly protected as forms of State public property. However, the government has adopted Sub-decree No.129 ANKr/BK on Rules and Procedures on Reclassification of State Public Properties and Public Entities on November 27, 2006 to reclassify State public property to State private property. Though there is no evidence has been presented to show how the lake has lost its public interest use, but base on this Sub-decree, MPP changed legal status of the whole BKL area to State private land and signed a 99 years lease to grant BKL to Shukaku Inc (Helmut.S, 2011). Additionally, article 16 and 18 of Sub-decree 129 ANKr/BK requires leasing of State public property of: i) not exceed 15 years, and ii) must not damage the property or change its functions in providing public services. Despite a 99-year lease is eighty-four years longer than the law permits; according to the agreement, the company is allowed to fill in the lake 80 ha out of 90 ha which means this will change totally the functions and nature of lake.

The MPP also failed to conduct Environmental and Social Impact Assessment (ESIA) as stated in article 4 of sub-decree No.146 ANKr/BK before granting BKL. Except BKL is a natural reservoir to reserve extra rainwater from flooding in Phnom Penh, prior to concession BKL was a touristic area where people could enjoy guesthouses, restaurants, bars, and natural fresh atmosphere of the lake. The development project of Shukaku Inc does not only change radically the nature of the lake, but it also impacts on living income of residents around BKL and the project itself does not respect the disposition of 2001 Land Law (Laurent K., 2012, p29).

Furthermore, the leasing process was lacked of transparency in State land classification and registration where the contract was also signed with lack of consultation with affected communities, lack of transparency without transparent bidding process, lack of environmental impact assessment, and lack of clear policy for fair and just resettlement and compensation to affected households. In addition to the lack of transparency, the cadastral map was published in 2007 detailing ownership of all plots within the development site listed as “unknown” that is to say that process violated article 248 of Land Law that stated, “the following acts are regarded as infringements on ownership and other legal rights to immovable property and constitute to penal offenses under this law: (...) an act or conduct that is a hinder the peaceful holder or possessor of immovable property in an area not yet recovered by the cadastral index map, the ownership rights of which have not yet been fully strengthened under this law (...)” . The BKL residents were living peacefully on their land for a long time and they were entitled to receive property rights to their land.

One more, the MPP also shamefully failed to implement the sub-decree No.183 ANKr/BK because since the sub-decree was issued in 2011 up to now, the MPP has not yet adjudicated the plots of 12.44 ha and delivered it to affected families that have been allowed to live on on-site development under the sub-decree. The shameful failure of MPP in adjudication and demarcation of 12.44ha for BKL residents has left questions to what the burdens of PPM to completely resolve BKL land dispute.

In short, a 7 years of land dispute between BKL residents and Shukako Inc is because the government has failed to implement effectively and fairly land legislations while government himself also has violated various areas of law in granting BKL.

Case No.2: Kampong Speu Sugar Company

1. Background of the Case

The lands granted to Kampong Speu Sugar Co., Ltd are in term of Economic Land Concession where the company has been granted three different areas in Trapaing Chour commune, Oral district, and Kampong Speu province. The total areas of the three concessions are 13,752 ha, which are 9052 ha, 695 ha and 4005 ha respectively. According to database of commune database system, there are 2,333 families or equal to 10,613 population living in 23 villages nearby the concessional zones in Trapaing Chour commune in 2010.

The contract of land concession of 9052 ha was signed on September 22, 2009 and other 4700 ha was signed on March 21, 2011, both approved by Prime Minister Hun Sen. There were six villages affected by ELCs to Kampong Speu Sugar Co., Ltd, and around 256 families from Ploch village, Trapaing Chour commune protested against the company to stop clearing their farmland (EC, 2013, p26-29). The company relocated an area of land to affected families about 7 km away from their village, where people refused to accept because this area belongs to military so that they still have to face forced eviction in the future. Moreover, the land is very rocky and high ground which is unfavorable for farming. Though the land dispute has not resolved, the affected families are not allowed to plant on their farmland; otherwise, their crops would be cleared. This land concession does not only affect the local people's farmland and grazing land, but as it is in the natural reserved area; it affects forest, wildlife and environment as well. The impacts of this land concession would not benefit the local people, but it only impoverishes the people by losing their source of family's food and income.

2 Legal Discussion

State public property is inalienable and ownership of those properties is not subject to prescription. Any property that constitutes a natural reserve protected by law is a State public property. According to Royal decree on Protection of Natural Areas on November 1, 1993, and Law on Natural protected Areas 2008 state that national parks, wildlife sanctuary, protected landscape and multi purposes areas, Ramsar site, biosphere reserve, natural heritage site, and marine park are the natural reserves, which means they are inalienable unless they lose the public interest use.

Contrastingly, on March 21, 2011, the government issued the Sub-decree No.47 ANKr/BK on Reclassification of 4,700 ha of land from Aoral wildlife sanctuary that is in the protected areas to Kampong Speu Sugar Co., Ltd. This sub-decree appears to violate Land Law 2001 article 16 and Law on Protected Areas article 1 and article 36. The Sub-decree also violates Sub-decree No.129 ANKr/BK on Rules and Procedures on Reclassification of State Public Properties and Public Entities article 16 and 18, which state that the lease of state property must not change direction of usage or damage those properties and must not effect or change its function in giving public service, and the lease must not exceed 15 years. It is sure that the company has cleared the land after land granted (EC, 2013, p29) which could change the nature of origin and function of land, while the duration of concession is believed to be 70 years, exceeded what the law permitted.

The government failed to fulfill the requirements under Sub-decree No.146 ANKr/BK on Economic Land Concession article 4 mention five cumulative criteria—regarding land classification, land use planning, impact assessment, reallocation, and compensation—which must all be fulfilled before an ELC is granted, but in practice these criteria are

disregarded. This weakness of legal practices has led to land disputes between local community and company, where the results government officials always show their favor to company and local community generally displaced or forced to leave their land and home with unfair compensation (Adhoc, 2013). The government seldom puts sanction or takes back the license from the company that violates the law or contract such as this Kampong Speu Sugar Co., Ltd, clearing land and cutting forest outside the concession area (EC, 2013).

Additionally, the 2001 Land Law article 59 states that the maximum of land concession area shall not exceed 10,000 ha and the issuance of land concession titles on several places greater than those authorized to one specific person or several legal entities controlled by the same natural persons is prohibited. Reversely, the government has granted three different areas of land with total land size of 13,752 ha to Kampong Speu Sugar Co., Ltd headed by Ms Kim Heang, a wife of Mr. Ly Yong Phat. Remarkably, Mr. Ly Yong Phat, a member of senate from ruling party, has already granted 8,343 ha to Phnom Penh Sugar Co., Ltd, and 9400 ha to Koh Kong Plantation Co. Ltd respectively. It is sure that he is an owner these three companies, where another report stated that he also has a share in a Thai company, Koh Kong Sugar Co., Ltd that has been granted another 9,700ha.

This is clear and evidential that the government has violated various areas of Cambodian laws and regulations in granting lands to Kampong Speu Sugar Co., Ltd and these land concessions have caused land disputes and affected local communities and environmental sustainability, especially the protected forest and wildlife.

Conclusion

The failure of Cambodian government in implementing laws and regulations concerning to land which has led to land disputes recently where the victims of land grabbing and forced eviction come up for protesting nationwide. The failure of effective land management has not only caused disputes but also it impoverishes affected households because land is the main source of Cambodian households to generate income and food security.

To resolve the land disputes, laws enforcement should be put in front and use them effectively. The purposes of social and economic development shall benefit to all rather than a few; hence, any impacts of development on communities shall be fairly compensated and relocated. Inevitably, a long-waiting resolution and unfairness of compensation and displacement will lead to chronic poverty of the evictees, so that the government should balance the development and social impacts on livelihoods.

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