

Land Ownership in Cambodia: Background, Division, and Acquisition

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Abstract

An overview is provided of the background, division, and entitlement of ownership acquisition under the Cambodian property laws. The legal situation is complex, due to the collapse, reestablishment, and frequent subsequent cancellations and amendments of relevant laws and regulations governing property issues. These have outstripped understanding and capacity of a number of institutions and legal practitioners concerned, leading to competing claim disputes over ownership. As a result, when dealing with competing claim land disputes, compromise or reconciliation is often resorted to rather than interpreting and implementing clauses under the existing laws. Instead, the ideal would be legal precedents should be set to facilitate a comprehensive understanding of the interpretation and implementation of legal clauses over division and entitlement of ownership acquisition in order to resolve competing claims and ensure justice to actual land possessors, and prevent future land disputes.

I. Introduction

Law creation is for serving people in society. Once created, a law is rarely abolished completely except for a change in political regime, and/or it does not reflect the current situation of social needs. In general, the created law is amended to update any clauses or articles which do not reflect the current situation of the country.

Frequent changes to created laws result in social consequences if the dissemination and understanding of these legal concepts are not comprehensively made. They will cause complexity, inconsistency, and confusion, which sometimes outstrips the capacity and understanding of responsible institutions and legal practitioners. One example which showcases this is the swift change to Cambodian property (land) laws in post-war land reform.

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In an effort to reconstruct law in the post-war period, Cambodia reestablished its legal system from scratch (Donovan, 1993, pp. 445–54; Kirby, 2009, p. 7). This has resulted from the government's own effort and technical assistance from donors who helped develop in this field (Kaneko, 2010, p. 1). For instance of the area of land governance, Cambodia established consecutive laws such as the Land Law of 1992 (hereinafter the '1992 Land Law'), the Land Law of 2001 (hereinafter the '2001 Land Law') and the Civil Code of 2007 (hereinafter the '2007 Civil Code'). These reflected the joint efforts of the government and donors to reconstruct laws and regulations governing properties in post-war Cambodia.

Over the period 1992 to 2007, Cambodia changed to its property laws frequently. One law, not so long established, was substantively replaced or amended by another one. For instance, the 1992 Land Law was created and implemented only to be replaced by the 2001 Land Law (East-West Management Institute, 2003, p. 26). Likewise, the 2001 Land Law was substantially amended in compliance with the 2007 Civil Code under the authority of the Law on Enforcement of Civil Code in 2011 (hereinafter is called the '2011 Civil Code Enforcement Law').

Such frequent and swift changes unavoidably result in complexity, inconsistency, and confusion. These, more or less, have outstripped the comprehensive understanding of authorities, legal practitioners, and stakeholders concerned. Not only local residents, but also many relevant practitioners have limited knowledge of the rapidly changed laws. Many social consequences, such as protests and interventions, are also attributed to resolving competing claim disputes with limited knowledge of laws.² As a consequence, the traditional concept of social reconciliation or compromise is often resorted to, rather than interpreting and implementing legal clauses over division and entitlement of ownership acquisition provided under the existing laws (Hem, 2015).

In order to prevent land disputes and resolve competing claim disputes justly and effectively, a comprehensive understanding of the interpretation and implementation of existing laws, especially legal clauses on division and entitlement of ownership acquisition, are the correct way in providing justice to actual land possessors or owners in Cambodia. This paper paves the way for a comprehensive understanding of the background, division, and entitlement of ownership acquisition under the existing Cambodian laws. It aims to serve as a guiding source for relevant stakeholders for taking into consideration when faced with the need to resolve competing claim disputes over land in Cambodia.

² A competing claim dispute is a type of land disputes where two or more people claim their rights or entitlement over a disputed land.

II. Background of Legislations Governing Land Tenure and Ownership in Cambodia

This section will review the background to the development of Cambodian property laws, land tenure, and ownership from the past until now.

1. Background of Legislations Governing Land Tenure

In the ancient period, all land belonged to the King (Acker, 1999, p. 33; Markussen, 2008, p. 2280). People did not own land, but they occupied and cultivated on land customarily (Russell, 1997, p. 102). However, such a practice was revoked when France colonized Cambodia and declared the Convention to invalidate the exclusive royal land and recognize private ownership in Cambodia in 1884 (hereinafter the ‘1884 Convention’) (Russell, 1997, p. 103; Acker, 1999, p. 33; Ayres, 2000, p. 20; Lim, 2006, p. 1). The 1884 Convention is regarded as the first land law of Cambodia.

The effort to introduce new concept of a modern property system was crystallized when Cambodia promulgated the first Civil Code in 1920 (hereinafter is called the ‘1920 Civil Code’). The 1920 Civil Code governed land ownership for the first time, and it was extensively applied in Cambodia until 1975 when Cambodia fell under the Khmer Rouge regime (Russell, 1997, pp. 104–5). The latter nationalized all properties under the control of the state and did not allow private ownership (Markussen, 2008, p. 2280; Simbolon, 2009, p. 71). After the collapse of the Khmer Rouge regime in 1979, Cambodia continued to implement collective ownership until 1989, when the government started to reform and re-privatize land (Acker, 1999, pp. 34-35; Frings, 1994, pp. 49-50; Markussen, 2008, p. 2280; Mensher, 2006, p. 807; Russell, 1997, p. 105; Simbolon, 2009, p. 72; Un and So, 2011, p. 292; Williams, 2000, p. 145). This was the start of the second period of ownership privatization in the Cambodian history.³

In order to support the initial land reform and privatization, the then-government issued two main decisions concerning land privatization policy, namely, the Policy on Farmers and the Policy on Land Management and Use, in 1989 (hereinafter the ‘1989 Policy Decisions’). To further strengthen the initiative and effort of land privatization, the Sub-decree on Providing Ownership on Residential Land to Khmer Citizens was issued on April 22, 1989 (hereinafter the ‘1989 Residential Ownership Sub-decree’). In order to implement the 1989 Policy Decisions and Sub-decree, the Instruction on Policy Implementation of Land Management

³ The first period of land privatization was in the French colony when France declared the Convention in 1884 to invalidate the exclusive royal right to land in Cambodia. The second period of land privatization started in 1989.

and Use was also issued to detail the process on June 3, 1989 (hereinafter the ‘1989 Instruction’).

These decisions on initial post-war land reform and privatization were only governed by the regulations and policies of the government, not by legislation. The 1989 Constitution of the State of Cambodia authorized a ‘right to occupy and use land’ to be administered through subsidiary legislation.⁴ The government then drafted the first land law during the transitional period (1989-1993),⁵ and it was promulgated in 1992 (Landau, 2008, p. 247). The 1992 Land Law became the first fundamental law for governing all land issues in post-war land reform in Cambodia.

One year later, Cambodia held a general election and established a new constitution (hereinafter is called the ‘1993 Constitution’). The 1993 Constitution bound Cambodia to constitutionally monarchical democracy.⁶ Thus, the political and economic regime shifted from socialism and a planned economy to democracy and a free market economy.⁷

The political and economic changes together with the Constitution had a vast influence over the property system, most notably as a result of the conflict of property rights between the 1992 Land Law and the terms of 1993 Constitution. The concept and principle of the 1992 Land Law followed the spirit of the 1989 Constitution and several regulations adopted in 1989 – socialism and a planned economy, and incomplete recognition of ownership rights over residential land and rights of occupation and use over agricultural land.⁸ The 1993 Constitution adopted democracy, free market economy, and full recognition of ownership rights over land.⁹ Thus, the 1992 Land Law could not satisfy the modern concept of social change and international economic integration prescribed under the 1993 Constitution (Acker, 1999, p. 32).

In order to follow the new concept and principle of the 1993 Constitution, the government initiated a new land law to replace the 1992 Land Law (East-West Management Institute, 2003, pp. 26 and 33). The drafting of the new land law started in 1995 with technical support

⁴ *Constitution of State of Cambodia*, 1989, Art. 17.

⁵ Cambodia was underway to the Paris Peace Agreement. On October 21, 1991, the Paris Peace Accord was concluded, and the ceasefire existed in Cambodia. Cambodia reached the national reunion and prepared for the general election under the auspices of the United Nations in 1993.

⁶ *Constitution of Kingdom of Cambodia*, 1993, Art. 1

⁷ *Ibid.*, Art. 56

⁸ For instance, Article 1 of the 1992 Land Law provides that all land in Cambodia belongs to the state, and Article 19 further states that people can have private ownership over residential land. These are contradictory to the concepts and principles of private ownership in the free market economy.

⁹ *Constitution of Kingdom of Cambodia*, 1993, Arts. 1, 44, and 56.

by the Asian Development Bank (ADB) (Lasimbang and Luithui, 2007, p. 128). Finally, the effort to establish a new land law was achieved when Cambodia formally promulgated the new land law on August 30, 2001; henceforward, the 2001 Land Law superseded the 1992 Land Law.

The 2001 Land Law is a separate law governing all land issues in Cambodia. It is also considered a special law referring to comprehensive land ownership regime in post-war land reform. However, the implementation of the 2001 Land Law was again short-lived, as a result of its conflicting with the new 2007 Civil Code prepared under the assistance of Japanese drafting.¹⁰ The 2007 Civil Code of Cambodia almost completely followed the Japanese Civil Code (Matsuura, 2005, p. 237). As a consequence, a number of provisions between the 2001 Land Law and the 2007 Civil Code were contradictory.

In order to reconcile this contradiction, the enforcement of the 2007 Civil Code was suspended several years. This gave a chance for the Civil Code drafters to make reconciliations between the 2001 Land Law and the 2007 Civil Code.¹¹ As a result of this effort, the government promulgated the Law on Enforcement of Civil Code in 2011. The 2011 Civil Code Enforcement Law cancelled and amended many provisions of the 2001 Land Law that were deemed contradictory to the clauses of the 2007 Civil Code.¹²

This provides the historical background of legislations governing land tenure and ownership in Cambodia. Today, only the 2001 Land Law, 2007 Civil Code, 2011 Civil Code Enforcement Law, and a number of subsidiary regulations,¹³ are the enforcing laws and regulations in Cambodia.

2. Remarkable Changes of Land Tenure and Ownership in Cambodia

This section will describe the types of land tenure and ownership recognized under the various legislations.

In the ancient period, as described above, all land in Cambodia belonged to the King (Acker, 1999, p. 33; Markussen, 2008, p. 2280). There was no private ownership; however, people

¹⁰ See: Law on Enforcement of Civil Code, 2011.

¹¹ Besides the 2001 Land Law, there are a number of legal clauses and provisions that are contradictory to other laws; for instance, the Law on Secure Transaction of 2007 that the team tried to make consistency with the 2007 Civil Code as well. The further details of this contradiction; see the Law on Enforcement of Civil Code, 2011.

¹² See: Law on Enforcement of Civil Code, 2011.

¹³ The number of enforcing subsidiary regulations governing land issues will be illustrated in the next sections in this paper.

had right to occupy and use land (Acker, 1999, p. 33; Markussen, 2008, p. 2280). Although people were not formal owners in theory, people were assumed owners of land through occupying and tilting the land in practice (Acker, 1999, pp. 32-33; Markussen, 2008, p. 2280; Rabé, 2009, p. 34; Russell, 1997, p. 102; Sik, 2000, p. 3). This tradition was deeply entrenched in Cambodian society and a customary practice before the French colonial period (Russell, 1997, p. 102).

The 1884 Convention was a turning point in Cambodian history, since it invalidated the exclusive royal right to land ownership and introduced private ownership (Acker, 1999, p. 33; Ayres, 2000, p. 20; Lim, 2006, p. 1; Russell, 1997, p. 103). This concept was crystallized when Cambodia promulgated the 1920 Civil Code, and this Code started to divide the type of land in Cambodia. According to the 1920 Civil Code, Cambodian land was divided into two categories: (1) private property and (2) collective property. Private property was referred to as any land that had been privately occupied by each individual. Collective property divided into two categories: (i) public collective property and (ii) private collective property.¹⁴

The 1920 Civil Code did not abandon the entrenched custom of land tenure practice before the adoption of modern property rights in law. It allowed local residents, who had occupied land customarily, to continue to do so.¹⁵ When they had satisfied the legal requirements of possession for a five-year period, they could become the owners of the occupied land by requesting to register and receive the final title from the authority.¹⁶ In this sense, the 1920 Civil Code transformed the customary tenure right to be under the legal requirements and limitations for acquiring ownership over customarily-occupied land, introducing the concept of private ownership.

The implementation of the 1920 Civil Code was extensively applied until 1975 when Cambodia fell to the Khmer Rouge regime (Russell, 1997, pp. 104-105). By then, Cambodia had achieved a proper legal system for managing property throughout the country, having established a register where 100% of land was under the status of possession and 10% under ownership (Lim, 2006, p. 4; Un and So, 2011, p. 291). However, the Khmer Rouge regime nationalized all properties under the control of the state (Markussen, 2008, p. 2280; Simbolon, 2009, p. 71). Private ownership was abolished (Biddulph, 2011, p. 226; Blunt and

¹⁴ Civil Code of Cambodia, 1920, Art. 635.

¹⁵ *Ibid.*, Arts. 688, 723, and 724.

¹⁶ *Ibid.*, Arts. 723 and 724.

Turner, 2005, p. 76; Khemro and Payne, 2004, p. 182). People were forced to work on land for collective agricultural production (Blunt and Turner, 2005, p. 76; Mehmet, 1997, p. 675).

After the collapse of the Khmer Rouge regime, land tenure fell into confusion. Land and buildings were vacant and of ownership uncertain (Feinberg, 2009, p. 283). People started to move and occupy empty land and buildings on a 'first-come, first-served' basis without clear support of legal documentation (Blunt and Turner, 2005, p. 283; Khemro and Payne, 2004, p. 182). Due to lack of human resources, Cambodia could not return to the previous practice of the pre-existing property system (Trzcinski and Upham, 2014, p. 58). As a result, Cambodia implemented collective ownership once again between 1979 and 1989 (Acker, 1999, p. 34; Frings, 1994, p. 49; Markussen, 2008, p. 2280; Russell, 1997, p. 105; Simbolon, 2009, p. 72). People worked on collective land for agricultural products as under the name of solidarity groups (*krom samaki*) (Acker, 1999, p. 5 and 34; Frings, 1994, p. 49; Slocomb, 2004, p. 453; Thiel, 2010, p. 228).

Due to the decreased productivity of the solidarity groups, the government decided to dissolve them and started to re-privatize land in 1989 (Acker, 1999, p. 19; Frings, 1994, pp. 49–50; Khemro and Payne, 2004; Russell, 1997, p. 105; Williams, 2000, p. 145). At the outset of the initial land reform, Cambodia did not have enough qualified human resources to manage the process. The then-government left local authorities, who were controllers of previous solidarity groups, to redistribute land to local residents based on the number of families and the availability of land without appropriate documentation (Acker, 1999, p. 28 and 35; Biddulph, 2011, p. 227; Frings, 1994, p. 54; Loehr, 2010, p. 1039; UNDP Cambodia, 2007, p. 13). In this context, only local authorities and neighboring people knew the history of land occupation (Bugalski and Pred, 2010, p. 3; Grimsditch and Henderson, 2009, p. 39; Inspection Panel, 2010, pp. 13–14; Leuprecht, 2004, p. 27; So et al., 2001, p. 15).

The post-war land reform and privatization had a number of remarkable features, especially the types of land tenure and ownership. According to the 1989 Decisions, land was divided into four categories in Cambodia: (1) residential land (domicile), (2) productive land (paddy and farm), (3) land reserved for forest and fisheries, and (4) reserved land of the state.¹⁷ Furthermore, the 1989 Decisions allowed land tenure in three forms: (1) ownership, (2) possession, and (3) concession.¹⁸

However, the concept of ownership was incomplete or ambiguous because through these

¹⁷ Policy on Land Management and Use, 1989.

¹⁸ *Ibid.*

decisions, “ownership right was permitted on residential land, and possession right on agricultural land.”¹⁹ This concept was formalized under the 1989 Residential Ownership Sub-decree, but it did not determine the size of each type of land tenure and ownership as that of the 1989 Decisions.²⁰ Nonetheless, the size of land tenure was determined in the 1989 Instruction. According to the 1989 Instruction, ownership over residential land was limited to 2,000 square meters; possession of agricultural land was limited to five hectares, and with land concessions applying for in excess of five hectares.²¹

The establishment of the 1992 Land Law followed most of concepts of the 1920 Civil Code.²² The 1992 Land Law divided Cambodian land into two categories: (1) private property and (2) collective property. Private property referred to any land that had been privately occupied by each individual.²³ Collective property divided into two categories: (i) public collective property and (ii) private collective property.²⁴ The 1992 Land Law allowed temporary possession, which could lead to ownership acquisition.²⁵ However, the principle of the 1992 Land Law was not different from that of the policies made in 1989; namely, allowed only private ownership over residential land.²⁶

Under the 2001 Land Law, a number of changes were made. The first change was in the technical term use in property law. The 2001 Land Law changed the ‘public collective property’ into ‘state public property’.²⁷ ‘Private collective property’ was changed to ‘state private property’.²⁸ Also, the previous ‘collective property of state’ was changed to ‘state land’ or ‘state property’.²⁹

The second change was to have full recognition of ownership over land tenure. The 1992 Land Law³⁰ followed the spirit of the 1989 Constitution adopted in the communist period, and only

¹⁹ *Ibid.*

²⁰ Sub-decree on Providing Residential Land Ownership to Khmer Citizens, 1989.

²¹ The 1989 Decisions determined the area of residential land, not exceeding 2,000 square meters; the area of agricultural land and concession land were not expressed, but these were clearly indicated in the 1989 Instruction. See: Decision Concerning Policy on Land Management and Use, 1989 and Instruction on Implementation of Policy on Management and Use of Land, 1989.

²² Land Law, 1992, Art. 10; *cf.* Civil Code of Cambodia, 1920, Art. 634.

²³ Land Law, 1992, Art. 10.

²⁴ *Ibid.*

²⁵ *Ibid.*, Arts. 61–76.

²⁶ *Ibid.*, Arts. 19 and 59.

²⁷ Land Law, 2001, Arts. 12-19; *cf.* Land Law, 1992, Art. 10.

²⁸ *Ibid.*

²⁹ Land Law, 2001, Arts. 12-19 (see also Sub-decree on State Land Management, 2005, Art. 3); *cf.* Civil Code of Cambodia, 1920, Art. 365; Land Law, 1992, Art. 10.

³⁰ See: Land Law, 1992, Arts. 1,10, and 19.

recognized ownership over residential land but a right for the occupation and use of agricultural land (East-West Management Institute, 2003, p. 24 and 33). However, the 2001 Land Law offered full recognition of the ownership of either residential or agricultural land in compliance with the spirit of the 1993 Constitution.³¹ The new law denied any relevance for ownership prior to 1979, but recognized the acquisition of ownership through original possession for the period between 1989 and 2001.³² The 2001 Land Law did not allow any new possession after it took effect on August 30, 2001.³³

The third change was the establishment of a modern land cadastral commission and systematic land registration. The 1992 Land Law introduced only an *ad hoc* method of land registration; namely, sporadic land registration.³⁴ The 2001 Land Law supplemented sporadic land registration with systematic land registration.³⁵

The fourth change was the introduction of new methods of fragmenting ownership, through economic land concessions and land leases.³⁶ Economic land concessions can be authorized by granting up to 10,000 hectares to developers or investors for 99 years.³⁷ Long-term land leases can be made for 15 years or more.³⁸ However, long-term leases of state public property can be authorized for only 15 years.³⁹ Concessions or long-term leases over large areas of land were to be made to boost economic activity on the land.⁴⁰

However, when Cambodia adopted the 2007 Civil Code, a conflict with property laws happened again. Although it was resolved by the amendments and clarification under the 2011 Civil Code Enforcement Law, some concepts or points remain in doubt; in particular, among those are prescription of ownership acquisition under the 2001 Land Law and 2007

³¹ Land Law, 2001, Art. 29; Constitution of Kingdom of Cambodia, 1993, Art. 44.

³² Land Law, 2001, Arts. 7 and 29.

³³ *Ibid.*, Arts. 29 and 268.

³⁴ Land Law, 1992, Arts. 203–217.

³⁵ See: Land Law, 2001, Arts. 226–246; Sub-decree on Procedure of Establishing Cadastral Index Map and Land Register, 2002.

³⁶ Land Law, 2001, Arts. 48–62 and 106–113; see also Sub-decree on Economic Land Concession, 2005; Sub-decree on Mortgage and Transfer of Long-Term Lease and Concession Rights, 2007; Sub-decree on Rule and Procedure of State Public Reclassification of State and Public Legal Entity, 2006.

³⁷ Land Law, 2001, Arts. 59 and 61; See also Sub-decree on Economic Land Concession, 2005.

³⁸ Land Law, 2001, Art. 106; Sub-decree on Mortgage and Transfer of Long-Term Lease and Concession Rights, 2007, Art. 2.

³⁹ Sub-decree on Rule and Procedure of State Public Reclassification of State and Public Legal Entity, 2006, Art. 18.

⁴⁰ See: Land Law, 2001, Arts. 48–62 and Arts. 106–113; Sub-decree on Economic Land Concession, 2005; Sub-decree on Mortgage and Transfer of Long-Term Lease and Concession Rights, 2007.

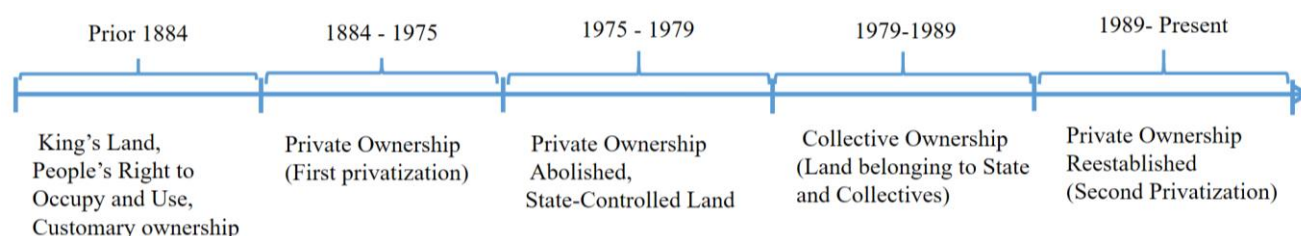
Civil Code. As noted above, the prescription period of the 2001 Land Law is five years, after which the occupier can acquire ownership over such land.⁴¹

In contrast, the 2007 Civil Code requires the ownership of immovable property to be authorized after ten or twenty years based on the integrity of land possessors.⁴² A possessor who has intention to own an immovable property in good faith; in principle, he or she can acquire it within twenty years.⁴³ However, when he or she comes to occupy it in an honest and innocent manner, he or she can acquire it within ten years.⁴⁴

In order to address this issue, the Commentary of Civil Code aimed to reconcile the differences in the prescription period between the two laws. The prescription under the authorization of the 2001 Land Law applies to the land where is not registered or needs to register for the first time (Ministry of Justice, 2010, pp. 130-131); while the 2007 Civil Code applies to the second or subsequent registrations (Ministry of Justice, 2010, pp. 130-131). In this sense, the 2007 Civil Code applies to registered immovable property. This is contradictory to the 2001 Land Law, which does not authorize ownership acquisition over registered land.⁴⁵

Nonetheless, such clarification is only made in the Commentary of Civil Code while the 2007 Civil Code, which is the substantive law, does not make this distinction. Article 162 of the 2007 Civil Code does not clearly make any such division. Thus, the current Cambodian property law system adopts another principle of ownership acquisition; namely, the ‘adverse possession’, into its legal property system. This is a remarkable new feature added to the Cambodian property law system in post-war land reform. Figure 1 provides an overview of the sequence of changes in the ownership of land in Cambodia.

Figure 1 The Timeline of Land Ownership Regime in Cambodia



Source: The Author

⁴¹ Land Law, 2001, Arts. 30 and 35.

⁴² Civil Code of Cambodia, 2007, Art.162.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Land Law, 2001, Arts. 35, 40, 41, 238 and 239.

In short, the Cambodian property laws were faced with swift changes, and types of land tenure and ownership were made accordingly. These are a source of complexity and inconsistency leading to confusion and disputes. Not only local residents, but also the authorities, legal practitioners, and stakeholders concerned have ambiguous concepts of ownership, division, and entitlement under such swiftly changed property laws. The contents of these laws may outstrip understanding and capacity of relevant authorities and legal practitioners. The next section will further demonstrate the complex division and entitlement of land ownership acquisition under the existing legislations.

III. Features of Land Division and Entitlement of Ownership Acquisition

The features of land division and entitlement of ownership acquisition under the existing legislations are a complicate issue that is worth studying and noting when resolving competing claim disputes. Cambodian property laws, especially the 2001 Land Law, divide land ownership into three categories: (1) public ownership, (2) collective ownership, and (3) private ownership. However, collective ownership, which refers to land belonging to indigenous people or pagodas, has the same features as private ownership when claims compete with the state. Therefore, a comparison of the entitlement rights between the public ownership and private ownership is enough for a full understanding of the entitlement right between the public ownership and collective ownership as well.

The following section will give a comparison of public ownership and private ownership under the Cambodian property laws. Especially, it will focus on the detailed study of concepts, notions, types, divisions, and the entitlement right of ownership acquisition during a competing claim between the state and private individual.

1. Public Ownership

Public ownership is a broad concept, which is not specified in the Cambodian context yet. Therefore, a comprehensive understanding of public ownership is requisite for settling disputes caused by competing claims over land tenure and entitlement of ownership acquisition between the state and local residents. The following will give an overview of the conception and notion of public ownership under existing Cambodian laws.

i. The General Concept and Notion of Public Ownership Public land, public property, state land, and state property have the same meaning insofar as they refer to land or property

belonging to the state, under ‘public ownership’.⁴⁶ Here, the terms ‘state land’ and ‘state property’ are used interchangeably.

Remarkably, the scope of state land is ambiguous in Cambodia. State land is assumed to cover 80 percent of the whole Cambodian territory, while the remaining 20 percent is assumed to be owned by private persons (Inspection Panel, 2010, p. xx; Loehr, 2010, p. 1039; Neef, Touch, and Chiengthong, 2013, p. 1086; Thiel, 2010, p. 227). Today, the majority of land remains unregistered. According to the report of the Ministry of Land Management, Urban Planning, and Construction (hereinafter is called the ‘Ministry of Land’), land registration achieved around 4.4 million out of 7 million estimated parcels for registration as of the end of 2016.⁴⁷ Therefore, a large quantity of land area remains unregistered and under competing claims between the state and private land possessors.

The present paper explores the concept and scope of state land under current laws and regulations as a means for resolving competing claim disputes between the state and private land possessors, where their entitlement rights are in claim for private ownership acquisition from the state. Several sources lay the foundation for the concept and scope of state land. The first source is the 1993 Constitution, Article 58 of which determines the identity of state land:

State property is primarily comprised of land, underground, mountain, sea, seabed, continental shelf, coastline, airspace, island, river, canal, stream, lake, forest, natural resources, economic and cultural center, national defense base, and other facilities determined as belonging to the state. Management, use, and control of state property shall be determined in law.

Based on this Article, the various types of state land are enumerated. However, this provision is vague because the 1993 Constitution leaves subsidiary law to determine other kinds of state land. In response to the constitutional authorization, the government adopted the new land law in 2001. The 2001 Land Law reiterates the concept of state land under the principle of the 1993 Constitution, as in Article 12 provided:

The state is the owner of properties in the territory of the Kingdom of Cambodia enumerated in the Article 58 of the 1993 Constitution and of all escheated

⁴⁶ Civil Code of Cambodia, 1920, Art. 365; Land Law, 1992, Art. 10; Land Law, 2001, Arts. 12–19; Sub-decree on State Land Management, 2005, Art. 3

⁴⁷ The current land registration achieved 4,451,817 parcels among the estimated 7 million parcels as of the 2016. See: Ministry of Land Management, Urban Planning, and Construction, Report on Total Result of Implementing 2016 Action Plan and Ongoing 2017 Action Plan, January 13, 2017, 6.

properties, or properties that owners voluntarily give to the state, or properties that are not subject to private ownership acquisition by law, or are not properties privately possessed by the provisions of the Chapter IV of this law.

In addition to the reiteration of Article 58 of the 1993 Constitution, this provision adds several kinds of properties which can be considered state land. However, such a definition is still vague in scope and coverage. Therefore, in order to address this issue, the government developed a Sub-decree on State Land Management in 2005 for controlling state land (hereinafter is called the '2005 State Land Sub-decree'). The 2005 State Land Sub-decree further clarifies the ownership of state land, as stated in Article 2:

State land means all lands belong to the state, through which are under the management of national ministries or institutions and land which is granted to the public legal entities or establishments that are recognized by law as the legal persons for management.

As of this provision, the concept of state land is slightly more clear, which is referred to all properties under the state and state organs. Under this provision, if comparing to that of the 1993 Constitution, the identities of state land are far broadened. Apart from knowing the identities of state land, the division of state land is further complicated and worth understanding under the existing laws because it is a source of claim and cut-off of entitlement right over private ownership acquisition between the state and local residents. The following section will illustrate this.

ii. Division of State Land State land is sub-categorized into two kinds: (1) state public land and (2) state private land. Such a concept of division dated back to the 1920 Civil Code and 1992 Land Law. The concepts of state land in both legislations were the same because the 1992 Land Law copied majority of concepts of the 1920 Civil Code for application in post-war land reform.⁴⁸ Noticeably, both legislations mentioned the sub-categories of state land, but failed to identify them with specificity.⁴⁹

When Cambodia adopted the 2001 Land Law, sub-categorization of state land gave some identities of state land, and further extended in subsidiary regulations.⁵⁰ This section will try

⁴⁸ Land Law, 1992, Art. 10; *cf.* Civil Code of Cambodia, 1920, Art. 635.

⁴⁹ Civil Code of Cambodia, 1920, Arts. 635-643; Land Law, 1992, Arts. 10-18.

⁵⁰ Land Law, 2001, Art. 15; Sub-decree on State Land Management, 2005, Art. 4.

to show the identities of state public land and state private land under the existing laws and regulations.

a. State Public Land State public land is mentioned in the 2001 Land Law. However, the 2001 Land Law does not give a clear definition of its purpose and use. Despite this, the purpose and use of state public land can be inferred from the context of the term ‘public’.⁵¹ State public land is dedicated exclusively to the public purposes (Khemro and Payne, 2004, p. 83; Thiel, 2010, p. 230).

In this sense, the public are assumed owners of state public land, while the state is only the representative owner to manage such land for public use. Having seen the significance of state public land, the 2001 Land Law enumerates state public land in a public sense, as stated in Article 15:

- (1) Any property that has a natural origin such as forest, natural lake, and navigable waterway, riverbank, and seashore;
- (2) Any property that is subject to particular arrangement for general use such as quay of harbor, railway, railway station, and airport;
- (3) Any property that is put for public use by either in its natural state or after arrangement such as road, lane, oxcart way, pathway, garden, and public park, and reserved land for those;
- (4) Any property that is put into operation for public service such as public school or educational building, administrative building, and public hospital;
- (5) Any property that is made as nature reserve protected by law;
- (6) Archeological, cultural, and historical patrimony;
- (7) Immovable property that is royal property, which is not private property belonging to the royal family.

Such a list is reiterated in the subsequent regulations, especially the 2005 State Land Sub-decree.⁵² In addition to this list, the 2005 State Land Sub-decree (Article 4) further adds ‘other types’ of land that have characteristics to serve ‘public use’ can be included in state public land. This phrase further broadens the scope of state public land, but is still subject to the requirement of ‘public use’.

⁵¹ Land Law, 2001, Arts.12-19.

⁵² Sub-decree on State Land Management, 2005, Art. 4; Decision on Inclusion of Identified Document in Classifying State Land as Annex to the *Prakas* on Identification, Mapping, and Classification of State Land, 2006, Art. 2.

b. State Private Land The 2001 Land Law lists the types of state public land, but fails to define state private land. The 2001 Land Law only mentions the use and transaction of state private land.⁵³ The failure to define state private land looms large on the existence and overlapping between state private land and individual private land. Subsequently, the 2005 State Land Sub-decree defines state private land in Article 5:

State private land is comprised of all land that excludes state public land and land occupied by private or collective possessors or owners in compliance with the 2001 Land Law. State private land includes all escheated properties, or properties that owners voluntarily give to the state, or properties in which legal possessors or owners are unidentified.

Such a definition is reiterated in the decision that was made by the Ministry of Land in 2006 to include identified documents for classifying as state land.⁵⁴ Such a definition is not perfectly clear on the distinction between the state private land and individual private land. The next section will illustrate the features of private ownership or private land, which are overlapped with state private land, which can give rise to ownership acquisition under current legislations.

2. Private Ownership

While the identification of what constitutes state public land is rather clear,⁵⁵ the distinction between state private land and individual private land is blurred because the majority of land is not registered and under customary land tenure by local residents (Ministry of Land, 2017, p. 6). As such, it is under competing claims between the state and private or collective land possessors or owners (Inspection Panel, 2010, p. vii-viii; Cambodian Human Rights Portal, 2011).

Overall, private ownership of land has certain special features or concepts in Cambodian property laws if compared to other jurisdictions. Sometimes, this feature causes confusion to foreign legal scholars, who may view Cambodian law through the lens of their own legal systems. This section will demonstrate the special features of private ownership under the Cambodia property laws.

⁵³ Land Law, 2001, Art. 7.

⁵⁴ Decision on Inclusion of Identified Document in Classifying State Land as Annex to *Prakas* on Identification, Mapping, and Classification of State Land, 2006, Art. 2.

⁵⁵ Land Law, 2001, Art. 15; Sub-decree on State Land Management, 2005, Art. 4.

i. Features of Private Ownership In most modern property systems, the ownership of most parcels has been established. Adverse possession is most often applied in a case involving a claim against a private owner, cutting off the interest of the non-occupier. However, in Cambodia, when the 5-year limitation period is invoked against ‘state private’ land, a land possessor, in effect, has right to acquire ownership over such occupied land.

Thus, the 2001 Land Law authorizes and recognizes ownership over land possession between 1989 and 2001.⁵⁶ In this sense, one who has occupied land for at least five years since 1989 without protest has ownership right (*sith-kama-sith*) and could request a definitive ownership title (*ban-kama-sith*) from the state by registration.⁵⁷ Any denial of land registration by the state authority will be considered a taking of legitimate unregistered ownership right under Cambodian property laws, except for land occupation on state public land.

This is one special feature of private ownership under the Cambodian property laws. In order to implement this special feature of private ownership acquisition, the principle of certificate or title issuance to any land possessor depends on registration under the guidelines of two circulars issued by the Ministry of Land. The first is the Circular on Procedural Implementation of Establishing Cadastral Index Map and Registration for Systematic Land Titles in 2002 (hereinafter is called the ‘2002 Circular’). The second is the Circular on Procedural Implementation of Sporadic Land Registration for Sporadic Land Titles in 2004 (hereinafter is called the ‘2004 Circular’).

Both circulars provide the same principle for issuing a certificate or title to a land possessor or owner, whose land is under systematic land registration from the state, or who applies for land registration under sporadic land registration. The following quote is extracted from both circulars on the principle of certificate or title issuance.

(1) Issuance of Ownership Title: will issue ownership title for any land that has been possessed peacefully without protest over five years until the promulgation of the new land law.

(2) Issuance of Possession Certificate: will issue possession certificate for any land that has been possessed peacefully without protest and less than five years prior to the land law takes effect. This certificate can be exchanged for ownership title when possession of such a land has completed five years or over (2002 Circular, p. 9; 2004 Circular, pp. 12-13).

⁵⁶ Land Law, 2001, Arts. 7 and 29.

⁵⁷ *Ibid.*, Art. 30.

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Based on these circulars,⁵⁸ whether a possession certificate or an ownership title is issued depends on the 5-year statute of limitation. If less than five years, a possession certificate is issued, and over five years, ownership title.⁵⁹ This can testify that ‘ownership’ over an occupied land, whether registered or not, is recognized based on the 5-year limitation period.⁶⁰

The five-year statute of limitation is a change of status of land tenure from possession (*phou-gak*) to potential ownership (*kama-sith*).⁶¹ Any occupant on possessed land less than five years is called a possessor (*phou-ki*), with only a possessory right (*sith-phou-gak*).⁶² When occupancy reaches or exceeds five years, the status of possessor (*phou-ki*) will be changed to the status of owner (*kama-sithi-kor*) with an ownership right (*sith-kama-sith*), even though the land is not registered yet.⁶³

The status of possessor (*phou-ki*) and owner (*kama-sithi-kor*) is made clear when such a possessed land is registered.⁶⁴ The issuance of a possession certificate or an ownership title depends on whether the five-year statute of limitation requirement has been completed.⁶⁵ For instance, where land has been occupied for less than five years, a possession certificate (*ban-phou-gak*) will be issued.⁶⁶ If occupied land for five years or more, an ownership title (*ban-kama-sith*) will be issued.⁶⁷ Even if one neglects to register occupied land, one will still have an ownership right (*sith-kama-sith*), which is still protected by law.⁶⁸ Registering later means the issuing of an ownership title, not a possession certificate.⁶⁹

The status of less than five years of possession is least protected against a third party’s claim.⁷⁰ The status of more than five years of possession without registration provides stronger protection because the five-year statute of limitation has been exceeded and the occupier is entitled to ownership rights.⁷¹ Registration of such possessed land provides the most protection,

⁵⁸ 2002 Circular, p. 9; 2004 Circular, pp. 12-13.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Land Law, 2001, Arts. 30, 31, and 40.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*, Arts. 31 and 40.

⁶⁵ *Ibid.*, Arts. 30, 31, and 40.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, Art. 42.

⁶⁹ *Ibid.*, Arts. 30, 31, and 40.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

being uncontestable because one receives definitive ownership title registered in the Land Register.⁷² Although possession (*phou-gak*) and ownership (*kama-sith*) differ in the extent of their legal protection, they have the same right in the use and transaction freely.⁷³

In short, a so-called possessor (*phou-ki*) is someone who holds possessed land less than five years with or without possession certificate (*ban-phou-gak*), while a so-called owner (*kama-sithi-kor*) is someone who holds possessed land for five years or more with or without ownership title (*ban-kama-sith*) under the Cambodian property laws.

ii. Private Ownership Acquisition An awareness and implementation of the concept of private ownership is fundamental for any land possessor, as well as for the enforcing authorities and other legal practitioners. Cambodian property laws provide a number of private ownership acquisitions such as (i) possession, (ii) social land concession, (iii) legal transaction, and (iv) adverse possession. This section will conceptualize private ownership acquisition under the current property laws.

a. Possession Possession is a fundamental principle of private ownership acquisition in Cambodian post-war land reform. In common, the principle of possession is applied to unregistered properties (Fraley, 2011, pp. 51-53; Mossoff, 2003, p. 375; Posner, 2000, pp. 552–53). Having seen the majority of land is not registered yet in Cambodia, the 2001 Land Law did not define private land at the time of its adoption. Instead, the 2001 Land Law has one chapter⁷⁴ which elaborates about the principle of possession of individual private land or private ownership in post-war land reform in Cambodia (Articles 29-47). The term ‘extraordinary acquisition’ in its title has a special meaning in Cambodian property laws and history. Such extraordinary acquisition can be applied in three situations.

The first ‘extraordinary acquisition’ is the collapse of Cambodian property system as a result of the political upheavals in the last half of the twentieth century (Chandler, 1979; Leifer, 2013, p. 11; Springer, 2009, p. 143). These situations ruined Cambodian human resources, law, and property system (Blunt and Turner, 2005, pp. 75-76; Brinkerhoff, 2005, p. 11; Nielsen, 2010, p. 301). As a result, there were profound effects on Cambodian human resources including those related to law and the property system. Thus only about 50 out of 1,000 cadastral officials remained alive at the end of Khmer Rouge period (Lim, 2006, p. 3).

⁷² Civil Code of Cambodia, 2007, Art. 137; Land Law, 2001, Arts. 30, 31, and 40.

⁷³ Land Law, 2001, Art. 39.

⁷⁴ Chapter IV, ‘Reestablishment of Immovable Property Ownership by Extraordinary Acquisition of Possession’.

Due to a lack of human resources, Cambodia could not return to recognize pre-existing property system; therefore, the 2001 Land Law abolished pre-1979 ownership.⁷⁵

The second ‘extraordinary acquisition’ is that people had occupied land before the 2001 Land Law existed. After the collapse of the Khmer Rouge regime in 1979, people moved and occupied vacant land and buildings on a ‘first-come, first-served’ basis without appropriate documentation of ownership recognition (Blunt and Turner, 2005, p. 76; Khemro and Payne, 2004, p. 182). The property system, such as it was, fell in confusion and controversy, given the occupation of land and buildings in a customary manner (Feinberg, 2009, p. 283; Mensher, 2006, pp. 804, 807).

Recognizing the existing situation, Chapter IV prescribed this ‘extraordinary acquisition’ so as to transform local residents’ occupied land from the status of possession into ownership. However, there were a number of requirements in order to allow the transition to ownership. The 2001 Land Law provides that only ‘legal possession’ can be recognized.⁷⁶ Such possession must have satisfied five legal requirements: it must be (1) unambiguous, (2) non-violent and peaceful, (3) uncontested and notorious to public, (4) continuous, and (5) in good faith.⁷⁷ If one occupies land in compliance with these requirements, one will become a legal possessor over such an occupied land.⁷⁸

Even if one satisfied these legal requirements, one did not become a full or definitive owner over occupied land immediately unless the five-year statute of limitation had been completed.⁷⁹ Thereafter, a definitive ownership title could be requested by registering occupied land at the cadastral office.⁸⁰

In short, extraordinary acquisition of possession of private ownership was an essential component of post-war land reform in Cambodia. Occupation of land during the five-year statute of limitation without protest meant that the possessor has a right to ownership even though the land has not been registered yet.

b. Social Land Concessions The second means for private ownership acquisition of state land under Cambodian property laws is by social land concessions.⁸¹ As noted above, the

⁷⁵ Land Law, 2001, Art. 7.

⁷⁶ Land Law, 2001, Art. 6.

⁷⁷ *Ibid.*, Art. 38.

⁷⁸ *Ibid.*, Arts. 7 and 38.

⁷⁹ *Ibid.*, Art. 30.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, Arts. 49, 51, 52, and 60.

2001 Land Law imposes an ultimatum over the new start of possession after it takes effect.⁸² In this sense, there will not be new possession on state land after the 2001 Land Law comes into force on August 30, 2001.⁸³

Although the 2001 Land Law cuts off new start of possession, it does not mean that the new way of possession is exhausted under this law. The 2001 Land Law authorizes another new way for private ownership acquisition by ‘social land concession’ in post cut-off date.⁸⁴ A social land concession is granted to landless or near-landless citizens for residential or household farming purposes.⁸⁵

A social land concession is characterized differently from extraordinary possession authorized under the Chapter IV of the 2001 Land Law (Articles 29-47). Extraordinary acquisition provides an incentive for people to move and clear vacant land for occupation, while social land concession is subject to the requirement for prior scrutiny and approval by the state authority.⁸⁶ Thus, landless people in need of land for residence or farming could submit applications to the authority for consideration.⁸⁷

The conditions for social land concession were similar to, but stricter than, those for extraordinary possession under the 2001 Land Law. While the social land concession recipient must have occupied and farmed land within five years and is thereafter eligible for ownership acquisition if they satisfy the five-year statute of limitation.⁸⁸ However, they cannot sell, exchange, rent, or give gifts during the first five years, in contrast to the extraordinary possession.⁸⁹

Article 3 of Sub-decree on Social Land Concession of 2003 identified a number of target groups who should be considered eligible for social land concession from the state as follows:

- (1) Provide land to poor and landless families for residence;
- (2) Provide land to poor families for household farming;
- (3) Provide land to families who are affected by development project for new resettlement;
- (4) Provide land to families who are affected by natural disasters;
- (5) Provide land to repatriated families;
- (6) Provide land to demilitarized and disabled families;

⁸² *Ibid.*, Arts. 29 and 268.

⁸³ *Ibid.*

⁸⁴ *Ibid.*, Arts. 48 and 49.

⁸⁵ Land Law, 2001, Arts. 49 and 51; Sub-decree on Social Land Concession, 2003, Arts. 1 and 2.

⁸⁶ Land Law, 2001, Arts. 53, 54, and 60.

⁸⁷ Land Law, 2001, Arts. 49 and 51; see also Sub-decree on Social Land Concession, 2003.

⁸⁸ Sub-decree on Social Land Concession, 2003, Art. 18.

⁸⁹ *Ibid.*

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- (7) Facilitate economic development;
- (8) Facilitate economic land concessions by providing land to workers for residential or farming purposes;
- (9) Develop poorly developed areas.

This emphasizes that social land concessions are important for equal development in Cambodia. The nine conditions above are for ending landlessness and ensuring that every person may have access to land after the 1989-2001 limitations imposed by the 2001 Land Law taking effect.

In short, social land concessions provided a novel mechanism for acquiring possession over state land after the introduction of the 2001 Land Law.

c. Ownership Acquisition by Legal Transaction The third means of private ownership acquisition is through a legal transaction, reflecting ownership privatization, Cambodia's opening up to the outside world. The 2001 Land Law clearly stated that all land, regardless of status of possession or ownership, can be sold freely in compliance with legal provisions.⁹⁰ It thus provided for the legal transaction of immovable properties between private persons.⁹¹ These could be made by purchase, exchange, gift, succession, and including the decision of the court.⁹²

A legal transaction or any informal change of possession or ownership must be registered or recorded in the cadastral land register.⁹³ Although the law provides such a requirement; in practice, citizens rarely register their properties when they transact (So *et al.*, 2001, p. 2; Trzcinski and Upham, 2014, p. 64). Citizens frequently make a private sale contract between seller and buyer, which is witnessed by lower local authorities such as village or commune chiefs, or at most, district governor (So *et al.*, 2001, p. 2; Trzcinski and Upham, 2014, p. 64).

However, such a practice is not considered to be effective for the transfer of property ownership if land ownership is registered.⁹⁴ In principle, the change must be made at the national level; namely, the General Department of Cadastre and Geography of the Ministry of Land for registering properties.⁹⁵

In sum, for strong protection under law, any land transaction must be registered at the cadastral register.

⁹⁰ Land Law, 2001, Art. 39.

⁹¹ *Ibid.*, Arts. 6, 63, and 71.

⁹² Land Law, 2001, Arts. 6, 63, and 71; Civil Code of Cambodia, 2007, Art. 160.

⁹³ Land Law, 2001, Art. 65; Civil Code of Cambodia, 2007, Arts. 134, 135, and 137.

⁹⁴ Land Law, 2001, Art. 246.

⁹⁵ *Ibid.*, Art. 238.

d. Adverse Possession As mentioned above, adverse possession is a new principle of land tenure introduced to Cambodian property laws after Cambodia adopted the new Civil Code, which follows the Japanese model, in 2007 (Matsuura, 2005, p. 237; Kaneko, 2010, pp. 12-14). Adverse possession is a principle of land occupation applied to registered land with a fixed period determined by law (Clarke, 2005, p. 563; Hogg, 1915, p. 84; Williams, 2009, p. 597). The new possessor, if he or she fulfills the legal requirements, can acquire ownership over registered land (Cherek, 2012, p. 227; Davis, 2010–2011, p. 74; Williams, 2009, p. 597). As mentioned in Article 162 of the 2007 Civil Code on the principle of adverse possession:

(1) Any person who has occupied an immovable property peacefully and notoriously to the public and has willingness to own such an occupied immovable property within 20 years shall acquire ownership over such occupied property.

(2) Any person who have occupied an immovable property peacefully and notoriously to the public and has willingness to own such an occupied immovable property within 10 years shall acquire ownership over such occupied property if that person was honest and innocent when he/she started to possess that immovable property.

(3) Provisions of paragraphs (1) and (2) shall not apply to immovable property that belongs to state property of any category.

The introduction of the principle of adverse possession will be a good sign for protecting a number of land possessors, especially, to whom deem to be informal or slum dwellers, who have occupied land claimed to belong to the state or a third party. However, this principle of adverse possession seems narrow and weak to protect land possessors when the 2007 Civil Code inserts a strict condition for applying this principle in paragraph (3).⁹⁶ The paragraph (3) puts a narrow application of the principle of adverse possession that cannot be not applied to state land *at any category*.⁹⁷ Thus, the principle of adverse possession does not give much advantage to land possessors in the future.

In short, land in Cambodia is divided into public, collective, and private ownership. Public ownership refers to land belonging to the state (as recognized by relevant laws and regulations), while collective ownership refers to land belonging to indigenous people and pagodas and private ownership refers to land owned by a particular individual or entity. The division of private ownership remains unclear because the majority of land remain unregistered. The

⁹⁶ Article 162 of Cambodian 2007 Civil Code completely follows Article 162 of Japanese Civil Code, except for the paragraph (3) See: Japanese Civil Code, 1896, Art. 162; Civil Code of Cambodia, 2007, Art. 162.

⁹⁷ Civil Code Cambodia, 2007, Art. 162.

state is the assumed owner of all land in the first instance. However, the acquisition of individual and collective private ownership can be made through extraordinary possession, social land concessions, legal transactions, and adverse possession, as the principles described above.

IV. Relation and Entitlement among State Public, State Private, and Individual Private Land

In addition to the complicate division, relation and entitlement of ownership acquisition among state public, state private, and individual private land are unique under the Cambodian property laws.

Under the 2001 Land Law, state land is divided into two: (1) state public land and (2) state private land. Such division is made in law. Noticeably, local residents had occupied land before law existed. As a consequence, the occupied land is overlapping with the state public and state private land, resulting in competing claims between the state and individual occupants (Inspection Panel, 2010, pp. vii-viii, Cambodian Human Rights Portal, 2011). However, under the current laws, the final determination of ownership over land is the definitive registration of such land in the cadastral land register.⁹⁸

Although local residents occupied land before law existed and overlapped state land (state public and state private land), their entitlement to ownership acquisition over such occupied land is restricted under laws. It does not mean that all their occupied land could be led to ownership acquisition. Therefore, understanding of entitlement right under laws is prerequisite for claiming ownership over occupied land. The following section will illustrate the relation, entitlement of ownership acquisition, and legal effect among state public, state private, and individual private land under the existing laws.

1. Relations, Entitlement, and Legal Effect

Relations, entitlement, and legal effect of state public, state private, and individual private land are unique under the Cambodian property laws. They have a remarkable close relation, but different legal entitlement and effect. This section will demonstrate the legal relation, entitlement, and effect of state public, state private, and individual private land under the existing laws.

State public land is subject to strict legal requirements under law. The 2001 Land Law

⁹⁸ Land Law, 2001, Arts. 30, 31, and Arts. 226-246; see also Trzcinski and Upham (2014, p. 57).

determines state public land to be inalienable and with no statute of limitation.⁹⁹ In this context, state public land cannot be sold or transferred, or subject to ownership acquisition by extraordinary possession under the Chapter IV of the 2001 Land Law.¹⁰⁰ Even though possessors had occupied land before law existed regardless of the length of possession, such an occupation is still illegal and repealed.¹⁰¹ Furthermore, the state can assert and confiscate such a possessed land by forcing these possessors from land without compensation and may face criminal charge, as stated in Article 43 of the 2001 Land Law:

The public property of the state shall not be subject to ownership acquisition at any case.

1. The status of the occupant of the state public property remains precarious and illegal if that status is not authorized by formalities prescribed in law.
2. An individual who has illegally occupied shall be forced to urgently vacate and shall be punished as determined in article 259 of this law.¹⁰²
3. An individual who has illegally occupied is not entitled to any compensation over his/her works and improvements made on that immovable property.

In sum, no private ownership acquisition can be made on state public property at any time under law. Despite this provision, state public land can be subject to temporary occupation and use.¹⁰³ Such occupation needs pay tax and is not authorized for private ownership acquisition.¹⁰⁴ Such occupation and use are precarious and revocable if an occupant does not pay tax.¹⁰⁵

Although the state public land cannot be alienated, it can be subject to a long-term term lease.¹⁰⁶ The long-term lease of state public land has a restricted period under law. In principle, long-term lease can have period of 15 years or more, but this is only applied to

⁹⁹ Land Law, 2001, Art. 16.

¹⁰⁰ Land Law, 2001, Art. 16; see also Sub-decree Rule and Procedure of State Public Reclassification of State and Public Legal Entity, 2006, Art. 4.

¹⁰¹ Land Law, 2001, Art. 18.

¹⁰² Article 259 of the 2001 Land Law provides that '[a]n infringement against public property shall be fined from five million (5,000,000) Riel to fifty million (50,000,000) Riel and/or shall be imprisoned from one (1) to five years. The perpetrator must leave the public property immediately. The perpetrator is not entitled to any indemnity for works or improvements made on that property'.

¹⁰³ Land Law, 2001, Art. 16.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ Sub-decree Rule and Procedure of State Public Reclassification of State and Public Legal Entity, 2006, Arts. 4 and 18.

state private and individual private land;¹⁰⁷ while the long-term lease of state public land is restricted by 15 years.¹⁰⁸

Whereas state private land has a different legal regime from state public land, it is subject to the same legal regime as individual private land. In this context, state private land can be subject to sale, exchange, distribution, transfer of rights, and land concession.¹⁰⁹ The detail of transaction process and requirement of state private land is determined in the sub-decree on land reclassification, which was adopted in 2006.¹¹⁰

As mentioned above, the 2001 Land Law prohibits private ownership acquisition of state public land even if such a possession is made at any time.¹¹¹ However, this law authorizes private ownership acquisition on state private land by principle of possession.¹¹² Chapter IV of the 2001 Land Law provides the details of the principle of possession, which can lead to ownership acquisition by individual possessor.¹¹³

Nevertheless, although the 2001 Land Law authorizes the possession of state private land to be able to lead to ownership acquisition by private individual possessors, such authorized possession has restricted period under law. The 2001 Land Law authorizes for possession to be legitimate only if it is made before its cut-off date. In this sense, the legitimate possession, which can lead to private ownership acquisition over such occupied land, must be made prior to August 30, 2001.¹¹⁴

Conversion to private land through individual possession is limited to state private land as of August 30, 2001. This shows that individual possessed land and state private land are overlapping and under competing claims between the state and private individual possessors due to the fact that the majority of land remains unregistered (Ministry of Land, 2017, p. 6). However, possessors, who had occupied land in compliance with the legal requirements as under Chapter IV of the 2001 Land Law, will have right to ownership acquisition over such

¹⁰⁷ Land Law, 2001, Art. 106; Civil Code of Cambodia, 2007, Art. 244; Sub-decree on Mortgage and Transfer of Long-Term Lease and Concession Rights, 2007, Art. 2.

¹⁰⁸ Sub-decree Rule and Procedure of State Public Reclassification of State and Public Legal Entity, 2006, Arts. 18.

¹⁰⁹ Land Law, 2001, Arts. 4 and 17; *Prakas* on Identification, Mapping, and Classification of State Land, 2006, Art. 27.

¹¹⁰ Sub-decree on Rule and Procedure of State Public Reclassification of State and Public Legal Entity, 2006.

¹¹¹ Land Law, 2001, Art. 18.

¹¹² *Ibid.*, Art. 29.

¹¹³ *Ibid.*, Arts. 29 – 47.

¹¹⁴ *Ibid.*, Art. 29.

occupied land; and they can request to register their land and receive the definitive title from authority.¹¹⁵

2. Land Reclassification

Although the Cambodian property laws divide state land into state public and state private land, both have a close relation in practice. The close relation rests on the principle of land reclassification authorized under the 2001 Land Law.¹¹⁶ In this sense, state public land can be reclassified as state private land when it loses public use, as stated in Article 16 of the 2001 Land Law:

State public properties, when losing public use, can be reclassified as state private properties by reclassification law.

Reclassification from state public land into state private land must be complied with the requirements and procedure under law. Currently, land reclassification is subject to the two main decrees. First is the Royal Decree and Sub-decree on Temporary Rule and Provision of State Public Land Reclassification of State and Public Legal Entity, which was adopted in 2006 (hereinafter is called the ‘2006 Land Reclassification Royal Decree’). Second is the Sub-decree on Rule and Procedure of State Public Land Reclassification of State and Public Legal Entity, which was also issued in 2006 (hereinafter is called the ‘2006 Land Reclassification Sub-decree’).

The 2006 Land Reclassification Royal Decree provides the legal requirements for reclassifying state public land to state private land. Article 3 of the 2006 Land Reclassification Royal Decree provides for three main reasons for reclassifying the state public land into state private land:

The reclassification from state public land to state private land can be made only if it satisfies the following conditions:

- (1) That property no longer serves the public use, or
- (2) That property loses its full qualification in serving the public use, or
- (3) That property is no longer directly used by the public.

These requirements are for the purposes of reclassifying state public land into state private land. Such purposes are satisfied prior to land reclassification. In addition to this, state public

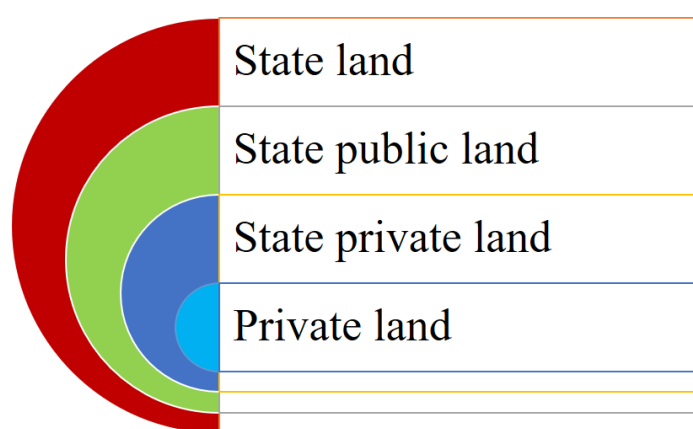
¹¹⁵ *Ibid.*, Arts. 31 and 40.

¹¹⁶ *Ibid.*, Art. 16.

land can be reclassified as state private land only if it is already registered as the ‘state public land’.¹¹⁷

Furthermore, the detailed process of state land reclassification is provided in the 2006 State Land Reclassification Sub-decree.¹¹⁸ In principle, in order to reclassify state public land into state private land, it must have a separate sub-decree for this process.¹¹⁹ The sub-decree specifies land area and location of the would-be reclassified land in detail.¹²⁰ Figure 2 shows the overlapping land tenure in Cambodia.

Figure 2 The overlapping land tenure under Cambodian property laws



Source: The Author

In short, the legal relation, entitlement, and effect among state public land, state private land, and individual private land are unique under the Cambodian property laws. State public land is not allowed for private ownership acquisition regardless of the length of the possession, but state private land is. Individual private person who occupied state private land before the cut-off date of the 2001 Land Law has right to ownership acquisition. However, when state public land loses its public use, it can be reclassified as state private land.

¹¹⁷ Royal Decree on Temporary Principle and Provision of State Public Land Reclassification of State and Public Legal Entity, 2006, Art. 4.

¹¹⁸ Sub-decree on Rule and Procedure of State Public Reclassification of State and Public Legal Entity, 2006

¹¹⁹ Royal Decree on Temporary Principle and Provision of State Public Land Reclassification of State and Public Legal Entity, 2006, Art. 5; Sub-decree on Rule and Procedure of State Public Reclassification of State and Public Legal Entity, 2006, Art. 41

¹²⁰ There are many sub-decrees on land reclassification from state public land to state private land. In each sub-decree details the land area and location. You can find a number of available sub-decrees relating to land reclassification from the following webpage: sithi.org, “Sub-Decrees Relating to Economic Land Concessions, Reclassification of Land, and Social Land Concessions (2008-2013),” n.d., http://www.sithi.org/temp.php?url=law_infrastructur.phpandtab_id=55andlg= (accessed March 28, 2017).

V. Conclusion

This Article portrays historical aspects and unique features of land tenure and ownership acquisition in Cambodia. Cambodian property laws came through establishment, abolishment, reestablishment, and frequent, subsequent cancellations and amendments, which result in complexity and inconsistency leading to confusion, which may outstrip understanding and capacity of a number of institutions and legal practitioners concerned. Division and entitlement of ownership acquisition are complicate under the Cambodian property laws that demand interpretation from legal experts when resolving competing claim disputes over land. Otherwise, the content of law remains intact while compromise continues to dominate the resolution process, which is not an effective way to prevent future land disputes. To achieve this end, only comprehensive understanding of the Cambodian property laws is prerequisite for reaching efficient and effective interpretation and implementation of law. This paper serves this purpose in this field.

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