

## **Land Possession in Cambodia: Legal Criteria and Effects**

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### **Abstract**

This paper is an analysis of the legal features of land possession in Cambodia. Cambodian property laws have two kinds of legal concepts over land possession. The first is ‘extraordinary’ possession authorized under the 2001 Land Law. The second is ‘prescriptive’ or ‘adverse’ possession authorized under the 2007 Civil Code. Extraordinary possession is applied to original or unregistered state private land, while prescriptive or adverse possession is applied for the subsequent registration of individual private land. Both types of possessions have remarkable legal criteria, requirements, and effects for assessing entitlement to ownership acquisition, as described in this paper. Understanding of these is fundamental for resolving competing claim disputes over land. Decisions made based on these features are considered as justification of legal fight among competing claim disputants in Cambodia.

### **I. Introduction**

The term ‘possession’ sounds simple; however, it has a lot of remarkable features in law. The purpose of this paper is to present the legal features of land possession under the Cambodian property laws. This paper will conduct a detailed legal analysis over the criteria, requirements, and effects of land possession under the current laws. Understanding these is fundamental for resolving competing claim disputes over land possession in Cambodia.<sup>2</sup>

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<sup>2</sup> Competing claim disputes are a controversial issue in Cambodia. These disputes sometimes occur when a person moves onto land that seems ownerless and left abandoned, or sometimes when outsiders bring some land documents to claim land from physical land possessors. In such kind of disputes, we often see overlapping land documents (titles or certificates) claimed over the land. In many redress fora, the holders of stronger land documents often win cases against customary land owners who have weaker documents (only receipts or without receipts) for proving their right to the land. As a consequence, these often result in protests or intervention-seeking by customary land

Thus, this paper suggests that when resolving competing claim disputes, the legal features of land possession should be put forward as fundamental grounds for consideration and resolution.

## **II. Legal Background of Land Possession under Cambodian Laws**

The concept of land possession is as old as when Cambodians first settled on the land. Historically, all land belonged to the King (van Acker, 1999, p. 33; Markussen, 2008, p. 2280; Diepart, 2015, p. 6). The King allowed people to occupy land in consideration for royalties (Diepart, 2015, p. 6). People occupied and tilled land according to their needs (Russell, 1997, p. 102; Diepart, 2015, p. 6). In this regard, they were assumed to be the owners of possessed land (Russell, 1997, p. 102; van Acker, 1999, pp. 32-3; Sik, 2000, p. 3; Markussen, 2008, p. 2280; Rabé, 2009, p. 34). This gave rise to the concept of so-called ‘customary’ land possession in Cambodia.

However, such a customary practice changed when Cambodia adopted the first civil code in 1920 governing land possession (hereinafter is called the ‘1920 Civil Code’).<sup>3</sup> The 1920 Civil Code turned the customary land occupancy into legal possession for private ownership acquisition. In this sense, land possession could lead to private ownership acquisition if it satisfied the legal requirements stated under this code.

The implementation of the principle of land possession for private ownership acquisition under the 1920 Civil Code ceased when Cambodia fell under the Khmer Rouge regime (Russell, 1997, pp. 104-105). Likewise, after the collapse of the Khmer Rouge, Cambodia did not allow land possession for private ownership acquisition (Frings, 1994, p. 49; Simbolon, 2009, p. 72.). However, Cambodia initiated the re-privatization of land in 1989 (Frings, 1994, p. 50; van Acker, 1999, p. 35; Williams, 2000, p. 145). Since then, the concept of land possession for private ownership acquisition has re-existed in Cambodia.

In order to support this, the government has developed several main legislations for regulating the criteria and requirements of land possession for private ownership acquisition. The first land law was passed in 1992 (hereinafter is called the ‘1992 Land Law’).<sup>4</sup> The 1992 Land Law provided the criteria and requirements of land possession for

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owners when forced evictions occur. Against this backdrop, the present paper suggests that resolvers should check the legal features of land possession under the current Cambodian property laws in order to decide who should be the legitimate owners of a piece of land.

<sup>3</sup> Civil Code of Cambodia, 1920, Arts. 708–725.

<sup>4</sup> Land Law, 1992.

private ownership acquisition.<sup>5</sup> Looking closely at these, the 1992 Land Law copied the concepts of land possession under the 1920 Civil Code for use in the post-war land reform (Hem, 2017, p. 110).

However, the implementation of the 1992 Land Law was short-lived when Cambodia promulgated the Constitution in 1993 (Hem, 2017, pp. 104, 106). There was the conflict of ownership concept between them (Hem, 2017, pp. 104, 106-107). Thus, it prompted Cambodia to initiate, draft, and pass the second new land law in 2001 (hereinafter is called the ‘2001 Land Law’).<sup>6</sup> The 2001 Land Law stipulated the criteria and requirements for land possession that could lead to ownership acquisition in Chapter IV of its law.<sup>7</sup>

Due to its legal tradition, Cambodia created the second civil code in 2007 (hereinafter is called the ‘2007 Civil Code’).<sup>8</sup> The adoption of the new civil code led to the conflict of some of the legal concepts under the 2001 Land Law (Hem, 2017, pp. 116-107, 111-112). The 2007 Civil Code included the concept of land possession with some remarkable differences from that in the 2001 Land Law.<sup>9</sup> However, such differences were reconciled by a commentary on the Civil Code in 2010<sup>10</sup> and the Law on Enforcement of the Civil Code in 2011 (hereinafter is called the ‘2011 Enforcement Law of Civil Code’).<sup>11</sup>

These are the notions of the legal background of land possession under the Cambodian property laws. However, the enforcing laws governing land possession are the 2001 Land Law, 2007 Civil Code, and 2011 Enforcement Law of Civil Code. Thus, this paper will discuss the legal features, criteria, and effects of land possession under these legislations as legal grounds for taking into consideration and resolving competing claim disputes in Cambodia.

### III. Legal Features of Land Possession

This paper pays much attention to the term ‘possession’ under the current legislations. The term ‘possession’ has some remarkable differences in use between the 2001 Land Law and

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<sup>5</sup> *Ibid.*, Arts. 61–76.

<sup>6</sup> Land Law, 2001; Hem (2017, pp. 106-107).

<sup>7</sup> 2001 Land Law, Chapter IV, Arts. 29–47.

<sup>8</sup> Civil Code of Cambodia, 2007.

<sup>9</sup> *cf.* 2001 Land Law, Chapter IV; 2007 Civil Code of Cambodia, Book III, Chapter III.

<sup>10</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 2010, pp. 130-131; Hem (2017, p. 112).

<sup>11</sup> Law on Enforcement of Civil Code, 2011.

2007 Civil Code of Cambodia. Both legislations employ the same term ‘possession’ in English, but it has different terms and uses in Khmer.<sup>12</sup>

The 2001 Land Law uses the term ‘*phou-gak*’ for ‘possession’ in its law.<sup>13</sup> It is a legal term that has an ordinary meaning as ‘tenure’ or ‘occupation or occupancy.’ On the other hand, the 2007 Civil Code uses ‘*kar-kan-kab*’ for ‘possession’ in its code.<sup>14</sup> The term ‘*kar-kan-kab*’ is a lexical term that has the literal meaning as ‘holding’ or ‘occupation or occupancy.’ The difference in the terms used is due to the 2001 Land Law covering only immovable properties, while the 2007 Civil Code covers both movable and immovable properties. The following section will demonstrate the legal features of land possession under both laws.

### **1. Features of Possession under the 2001 Land Law**

The 2001 Land Law mentions the features of land possession extensively in Chapter IV. The Chapter calls this as ‘extraordinary acquisition of ownership *via* possession.’<sup>15</sup> In this paper, it is hereinafter referred to as ‘extraordinary possession’ (see also Hem, 2017, pp. 120-121). The following will illustrate the legal features of the extraordinary possession on two points: (1) criteria and (2) requirement of land possession.

*i. Criteria of Legal Possession/Possessor* As mentioned above, the 2001 Land Law does not give a clear definition of the term ‘possession’, although it provides a chapter elaborating on the criteria and requirements of land possession.<sup>16</sup> The 2001 Land Law stipulates that only ‘legal possession’ can lead to ‘ownership acquisition.’<sup>17</sup> This places much emphasis on the term ‘legal possession’ as the condition for transforming land occupation into private ownership. Therefore, the question is what criteria constitute a legal possession under the 2001 Land Law?

Article 38 of the same law answers this question by providing the ‘criteria’ of the legal possession.<sup>18</sup> According to this Article, legal possession must satisfy five criteria: (1) unambiguity, (2) non-violence, (3) well-known to the public, (4) continuity, and (5) good faith. The following paragraphs consider each of these criteria in turn.

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<sup>12</sup> 2001 Land Law, Chapter IV; 2007 Civil Code of Cambodia, Book III, Chapter III.

<sup>13</sup> 2001 Land Law, Chapter IV.

<sup>14</sup> 2007 Civil Code, Chapter III, Book III.

<sup>15</sup> 2001 Land Law, Chapter IV.

<sup>16</sup> 2001 Land Law, Chapter IV.

<sup>17</sup> *Ibid.*, Arts. 6 and 37.

<sup>18</sup> *Ibid.*, Art. 38.

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The 2001 Land Law requires that ‘possession’ must be ‘unambiguous’ (*pit-bra-kot*). Unambiguity refers to the ‘real intention’ of a possessor when he or she starts to occupy a piece of land. The law requires that a possessor must have the real intention to occupy land for his or her ‘exclusive ownership.’<sup>19</sup> Thus, in principle, the law requires occupant to possess it by himself or herself. Nonetheless, the 2001 Land Law also seems lenient since it can authorize that such possession can be made by another on behalf of the future occupant. In this case, the occupant needs to prove that such possession was made on his or her behalf.<sup>20</sup>

Possession must be ‘non-violent’ (*kmien-hoeng-sar*). In this sense, a possessor must enter into occupying land without using force to dismiss the original possessors. If he or she uses force or violence to dismiss the original possessors in order to occupy the piece of land, he or she is not considered as a ‘legal possessor.’ Thus the possession is not legitimate, and he or she is not entitled to ownership acquisition. However, the law provides that if he or she is an original possessor of a piece of land, they can protect that land by using force to dismiss encroachers. In this case, the law does not consider him or her as the illegal possessor, and he or she is still entitled to ownership acquisition.<sup>21</sup>

Possession must be ‘well-known to the public’ (*doeng-leu-chea-sar-thea-ranak*). The law stresses that a possessor must not hide himself or herself when taking occupation of a piece of land. The land must be open to the public and not already in the possession of anyone else. He or she must make himself or herself publicly known, so that if others had a prior interest in that land, they can object and claim against his or her occupation.<sup>22</sup>

Possession must be ‘continuous’ (*khmien-ak-khan*). The law emphasizes that, once a possessor enters into occupying a piece of land; he or she must continue to live and work on it without abandonment. If he or she occupies a piece of land for residence, they need to construct a house and live there until the required period for ownership acquisition under the law is reached (see below). Likewise, if he or she occupies some land for farming, they need to use the land for this purpose without abandonment. However, if he or she keeps land fallow without farming for a short period in order to recover fertility, the law does not

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<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

consider this as the abandonment of possessed land. He or she is still entitled to ownership acquisition.<sup>23</sup>

Possession must be ‘in good faith’ (*so-cha-rit*). The term ‘good faith’ refers to the possessor not being aware of any third party’s right over the land when he or she enters into occupying it. When he or she starts to occupy a land without knowing a third party’s right over it, he or she is considered as a ‘possessor in good faith.’ In this case, he or she is entitled to ownership acquisition when the statute of limitations is reached (see below).<sup>24</sup>

To recapitulate, a legal possession must be unambiguous, non-violent, well-known to the public, continuous, and in good faith under the 2001 Land Law. A possessor satisfies these five criteria in order to make his or her possession lawful under that law.

***ii. Legal Requirements for Ownership Acquisition*** Besides these five criteria as a legal possessor, the 2001 Land Law puts some restrictions for private ownership acquisition.

First, the 2001 Land Law requires a legal possession to be made between 1989 and 2001.<sup>25</sup> Entering into new possession of land after that period is not considered as ‘legal possession,’ and the possessor is not entitled to ownership acquisition.<sup>26</sup>

Second, the 2001 Land Law only allows for possession for state private land during the above-mentioned period to be entitled to ownership acquisition. Possession of state public land is not authorized and is not entitled to private ownership acquisition regardless of how long it has been occupied.<sup>27</sup>

Third, the 2001 Land Law puts a statute of limitations of five years for contesting ownership acquisition.<sup>28</sup> If a possessor has occupied land for at least five years, they are entitled to ownership acquisition.<sup>29</sup> They can request authority to register their land and receive a definitive land ownership title.<sup>30</sup> The prescriptive 5-year period is only applied for possession over original or unregistered land.<sup>31</sup>

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, Art. 29.

<sup>26</sup> 2001 Land Law, Art. 29; Hem (2017, p. 122).

<sup>27</sup> 2001 Land Law, Arts. 15, 16, 18, and 43; Hem (2017, pp. 126-127).

<sup>28</sup> 2001 Land Law, Art. 30; Hem (2017, p. 121).

<sup>29</sup> 2001 Land Law, Art. 30; Hem (2017, p. 121).

<sup>30</sup> 2001 Land Law, Art. 30; Hem (2017, p. 121).

<sup>31</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 2010, pp. 130-131; Hem (2017, p. 112).

In short, a possession is entitled to ownership acquisition only if it is occupied state private land between 1989 and 2001 and exceeds the five-year statute of limitations.

## 2. Features of Possession under the 2007 Civil Code

The 2007 Civil Code defines ‘possession’ as one of the ‘real rights.’<sup>32</sup> Article 138 identifies the real rights as consisting of (1) ownership,<sup>33</sup> (2) possession, (3) usufructuary real rights,<sup>34</sup> and (4) security rights<sup>35</sup>. However, this paper covers only ownership and possession, especially the relationship of possession leading to ownership acquisition over immovable properties. The following will demonstrate the features of possession for ownership acquisition under the 2007 Civil Code.

*i. Features of Possession (kar-kan-kab)* The 2007 Civil Code entitles its Chapter III as ‘Possessory Right’ (*sith-kan-kab*). The Chapter provides a general tenet regarding possession under this code. As mentioned above, due to the 2007 Civil Code covering both movable and immovable properties, thus it defines the term ‘possession’ (*‘kar-kan-kab’*) in a broad sense referring to the ‘holding of a thing.’<sup>36</sup>

The term ‘holding’ is further defined as the ‘state of controlling a thing as a matter of fact, whether directly or indirectly.’<sup>37</sup> This code also defines a ‘thing’ as ‘a corporeal object or substance comprising a gas, liquid, or solid,’<sup>38</sup> and it can be divided into movable and immovable properties.<sup>39</sup> Immovable properties comprise land or anything fixed in place to land, such as a building or structure, crops, timber, *etc.*<sup>40</sup> This paper focuses on immovable property. Thus, it will replace ‘thing’ with ‘immovable property,’ while ‘holding’ will be replaced by ‘tenure’ or ‘occupation or occupancy’ for this analysis.

Regarding possession over immovable properties, the 2007 Civil Code provides similar features as those of the 2001 Land Law. The 2007 Civil Code provides that possession can

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<sup>32</sup> ‘Real rights’ refer to the ‘right to directly control a thing, and may be asserted against all persons.’ *See* Civil Code of Cambodia, Art. 130.

<sup>33</sup> ‘Ownership’ refers to the “right of an owner to freely use, receive income and benefits from and dispose of the thing owned, subject to applicable laws and regulations.” *See Ibid.*, Art. 138.

<sup>34</sup> The usufructuary right consist of perpetual lease, usufruct, right to use/right of resident, and servitude. *See Ibid.*, Art. 132.

<sup>35</sup> The security rights comprise right of retention, statutory lien, pledge, hypothec, and transfer of title for security purpose. *See Ibid.*

<sup>36</sup> Civil Code of Cambodia, Art. 227.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, Art. 119.

<sup>39</sup> *Ibid.*, Art. 120.

<sup>40</sup> *Ibid.*

be direct or indirect.<sup>41</sup> Direct possession mean a possessor needs to occupy the immovable property by him or herself. In this case, he or she is called the ‘direct possessor.’<sup>42</sup> Indirect possession means a possession is made by another person. They can hire a person to occupy land on behalf of him or her. He or she is called the ‘indirect possessor.’<sup>43</sup>

However, ownership acquisition of land is based on the intentions of the possessor.<sup>44</sup> The law requires that possession must be made with genuine intention to ownership.<sup>45</sup> If a possessor does not have the intention of becoming the owner of immovable property, he or she cannot become an owner. The law also provides that entering into occupying land without the intention of ownership cannot be altered into possession with intention to ownership.<sup>46</sup>

However, there are exceptions to the above-mentioned provisions. First, if a possessor declares to the person who puts them into possession that he or she intends to become the owner, they can become the possessor with intention to ownership.<sup>47</sup> Second, if he or she commences the possession anew on the basis of a new ground of ownership acquisition with the intention of becoming the owner, they also become the possessor with intention to ownership.<sup>48</sup>

In addition to this, the 2007 Civil Code demands possession must be in good faith, peaceful, and open. Possession in good faith (*kar-kan-kab-doy-so-cha-rit*) refers to occupying land without the knowledge of anyone else having the prior right of ownership to it.<sup>49</sup> Peaceful possession (*kar-kan-kab-doy-san-te-vi-thi*) refers to occupying a land without using violence.<sup>50</sup> Open possession (*kar-kan-kab-doy-doeng-leu-chea-sar-thea-ranak*) refers to entering into occupying a land without concealment so that others who have rights over the

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<sup>41</sup> *Ibid.*, Art. 228.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> There are two types of possessions: (1) possession with intention of ownership and (2) possession without intention of ownership (Art. 232). The assessment of both types depending on the basis of the “objective nature of the ground of acquisition of the possession.” See Civil Code of Cambodia, Art. 232.

<sup>45</sup> *Ibid.*, Art. 232

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, Art. 233.

<sup>50</sup> *Ibid.*

land can know or see the fact of such possession.<sup>51</sup> These conditions are crucial for assessing criteria for ownership acquisition over possessed land.

The 2007 Civil Code also requires possession to be ‘continuous’ (*kar-kan-kab-chob-ro-hout*) where a possessor occupies the land without subsequent abandonment. The law requires him or her to show at least two different times of such possession.<sup>52</sup> Namely, they need to show evidence for their previous and current periods of possession.<sup>53</sup> If there is consistency over the evidence of such possession without abandonment and the required period for ownership acquisition, their possession is assumed to be ‘continuous.’<sup>54</sup>

Besides these, the 2007 Civil Code provides some features of possession that are deemed to be flawed. ‘Flawed possession’ (*kar-kan-kab-doy-mean-vi-ka-rak*) is contrary to possession that is peaceful and open.<sup>55</sup> The law identifies two types of flawed possession. First is ‘possession in bad faith’ (*kar-kan-kab-doy-tuch-cha-rit*) that refers to occupying land where the possessor knows that they have no right of possession over it.<sup>56</sup> Second is ‘negligent possession’ (*kar-kan-kab-doy-mean-kom-hos*),<sup>57</sup> which refers to occupying land where the possessor lacks knowledge resulting from negligence.<sup>58</sup> However, flawed possession is not necessarily a hindrance; it means that it will take a longer time for ownership acquisition, if it is approved.<sup>59</sup>

In short, legal criteria of land possession under 2007 Civil Code are not much different from those of 2001 Land Law. Possessors are presumed to be in possession with the intention to ownership, in good faith, peaceful, continuous, and open.<sup>60</sup>

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<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, Art. 234.

<sup>53</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, p. 180.

<sup>54</sup> *Ibid.*, Art. 234.; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, p. 180.

<sup>55</sup> *Ibid.*, Art. 233.

<sup>56</sup> *Ibid.*

<sup>57</sup> There is awkward translation of the English term ‘negligence’ in Khmer language in this Article. Negligence is translated as ‘កំហុស’ (*kom-hos*). The latter term means ‘mistake,’ ‘err,’ or ‘guilt’ in English. However, the term ‘negligence’ is in general translated in Khmer as ‘ធ្វេសប្រហែស’ (*tve-pro-has*), ‘ខ្ចីញ៉ា’ (*khchi-khchea*), or ‘មិនយកចិត្តទុកដាក់’ (*min-yok-chet-tuk-dak*). Such translations fits the definition in this Article. *See Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Civil Code of Cambodia, Arts. 162, 234, and 235; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, pp. 130-131.

<sup>60</sup> Civil Code of Cambodia, Art. 234.

*ii. Legal Requirements for Ownership Acquisition* The code further provides that ‘ownership over immovable property may be acquired not only *via* contract, inheritance or other causes set forth in this Section IV....’<sup>61</sup> In Section IV on ‘ownership acquisition,’ the 2007 Civil Code provides a statute of limitations for ownership acquisition differently from the 2001 Land Law. Article 162 of the 2007 Civil Code requires a prescriptive period for ownership acquisition of 10 to 20 years based on intention of the land possessors.<sup>62</sup> If a possessor enters into occupying a land in good faith, he or she can acquire ownership within ten years.<sup>63</sup> If a possessor enters into occupying land through flawed possession, he or she may acquire ownership within twenty years.<sup>64</sup>

However, the 2007 Civil Code defines the type of land which applies for this statute of limitations. According to the commentary on the Civil Code, this prescriptive period applies to registered private land.<sup>65</sup> Article 162 does not apply this to state land of any kind (state private and state public land).<sup>66</sup> Thus, since the effect-taking of the 2007 Civil Code through its enforcement as law in 2011, registered private land is subject to ownership acquisition authorized under this Code.<sup>67</sup> This is the newly-added feature of Cambodia property, which is called the ‘adverse possession’ (Hem, 2017, p. 112). However, this new feature is not broadly understood yet in Cambodia.

In short, the 2007 Civil Code authorizes the statute of limitations for possession for registered private land of from 10 to 20 years, based on the intention of possession. In good faith, ownership acquisition is made after 10 years; while ownership acquisition by flawed possession is made after 20 years.

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<sup>61</sup> *Ibid.*, Art. 160.

<sup>62</sup> Civil Code of Cambodia, Art. 162; Hem (2017, p. 124).

<sup>63</sup> Civil Code of Cambodia, Art. 162; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, pp. 130-131.

<sup>64</sup> Civil Code of Cambodia, Art. 162; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, pp. 130-131.

<sup>65</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 130–31; Hem (2017, p. 124).

<sup>66</sup> Civil Code of Cambodia, Art. 162; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 130–31; Hem (2017, p. 124).

<sup>67</sup> Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, 130–31.

#### IV. Protection of Land Possession

Based on an understanding of the features of land possession under both laws, it is necessary to look at how both legislations provide a strong framework of protection for legal possession or legitimate ownership against a third party's claim.

The 2001 Land Law provides protection for a legal possessor who has not yet completed the required period for ownership acquisition. The law allows them to continue occupying land until completing the prescriptive period.<sup>68</sup> In case that he or she transfers this possession to another, the period will carry on to the receivers for ownership acquisition.<sup>69</sup> When the prescriptive period is reached, the original possessor or his or her successor can request to register the occupied land.<sup>70</sup>

When the possession meets the criteria for legal possession and has reached the statute of limitations, the law considers the possessor as the legitimate owner. Article 14 of the 2011 Enforcement Law of the Civil Code requires that a possessor needs to receive an ownership title.<sup>71</sup> In case that a possessor fails or neglects to register, legitimate ownership is still protected under the law.<sup>72</sup>

If there is a claim from a third party over such possessed land, the law requires the legal features of land possession to be taken into consideration against land certificate or titles. Article 40 of the 2001 Land Law states that a possession certificate is only a proof of tenure; it does not indicate ownership.<sup>73</sup> Although ownership title may have been uncontested under the 2001 Land Law, the 2007 Civil Code cut off this clause by making provisions for 'adverse possession' over titled land.<sup>74</sup> Thus, previously-recognized land titles still can be argued against under the new code.

Above all, the system provides a strong framework to protect legal possessors from arbitrary eviction (Hem, 2016, p. 25). The 2001 Land Law authorizes that eviction of a possessor can

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<sup>68</sup> 2001 Land Law, Arts. 30 and 31.

<sup>69</sup> *Ibid.*, Art. 30.

<sup>70</sup> *Ibid.*

<sup>71</sup> Law on Enforcement of Civil Code, Art. 14.

<sup>72</sup> Constitution of Cambodia, Art. 44; 2001 Land Law, Art. 42, and Civil Code of Cambodia, Art. 242.

<sup>73</sup> 2001 Land Law, Art. 40.

<sup>74</sup> Civil Code of Cambodia, Art. 162; Ministry of Justice, *Article-by-Article Commentary on Civil Code of Cambodia*, pp. 130-131.

be made only with an order from court.<sup>75</sup> In this case, the law requires that a possessor needs to undergo the due process of dispute resolution and appropriate decision-making through judicial recourse.<sup>76</sup> Where there is contradictory evidence between land documents, the law requires the court to conduct physical investigation and verify the type, origin, date, and situation of issuing the land titles or certificates before decision-making.<sup>77</sup> If the decision rendering an eviction causes turbulence, such order can be temporarily suspended.<sup>78</sup>

This is clearly evident that Cambodian laws has a strong legal framework for the protection of legal possession from a third party's claim or forced eviction.

## V. Conclusion

Following Cambodia's most turbulent recent history, legal concepts regarding land possession are unique to Cambodian property laws. Under the 2001 Land Law, it is the extraordinary possession that is applied for original or unregistered land since the re-privatization of land in Cambodia. Under the 2007 Civil Code, it is the prescriptive or adverse possession that is applied for registered private land. The latter is newly-added feature to Cambodian property laws since the introduction of the new civil code.

Extraordinary possession, under the 2001 Land Law, must meet with the conditions of legal possession and complete the statute of limitations after five years, for the individual to be entitled to ownership acquisition and obtain a definitive land title from the state. Likewise, with prescriptive or adverse possession under the 2007 Civil Code, they must meet with the conditions of land possession and complete the statute of limitation after either 10 years or 20 years, based on integrity of possessors. If they satisfy these requirements, then they can request to register the possessed land.

However, failure or negligence to register their possessed land is still protected by laws. Cambodian property laws provides protection for actual possessors. The case for extraordinary possession can argue against land possession certificates, while adverse possession under 2007 Civil Code can argue against ownership titles. Thus, when resolving land disputes, especially competing claims, the legal features of land possession prescribed under both laws should be put forward as legal grounds for decision-making.

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<sup>75</sup> 2001 Land Law, Art. 35; Hem (2016, p. 25).

<sup>76</sup> 2001 Land Law, Art. 35; Hem (2016, p. 25).

<sup>77</sup> 2001 Land Law, Arts. 35 and 39.

<sup>78</sup> 2001 Land Law, Art. 36; Hem (2016, p. 25).

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**Glossary**

English Term	Khmer Term (with Transliteration)	Comments
Possession	អាគ្គ: ( <i>phou-gak</i> ) or ករកាន់កាប់ ( <i>kar-kan-kab</i> )	អាគ្គ: is used in the 2001 Land Law, while ករកាន់កាប់ is used in the 2007 Civil Code.
Possessor	អាគី ( <i>phou-gi</i> ) or អ្នកកាន់កាប់ ( <i>nak-kan-kab</i> )	អាគី is used in the 2001 Land Law, while អ្នកកាន់កាប់ is in the 2007 Civil Code.
Possessory right	សិទ្ធិកាន់កាប់ ( <i>sith-kan-kab</i> )	សិទ្ធិកាន់កាប់ is a key term in the 2007 Civil Code, as the explanation for the term អាគ្គ: in the 2001 Land Law.

Unambiguity or Unambiguous	ពិតប្រាកដ ( <i>pit-bra-kot</i> )	One of the criteria for land possession under the 2001 Land Law.
Direct possessor or possession	អ្នក/ការកាន់កាប់ដោយចំពោះ ( <i>nak/kar-kan-kab-doy-chom-puos</i> )	Used in the 2007 Civil Code; the 2001 Land Law uses a similar explanatory phrase for អាគៈមានលក្ខណៈពិតប្រាកដ.
Indirect possessor or possession	អ្នក/ការកាន់កាប់ដោយប្រយោល ( <i>nak/kar-kan-kab-doy-bror-yaul</i> )	Used in the 2007 Civil Code; the 2001 Land Law uses a similar explanatory phrase for អាគៈមានលក្ខណៈពិតប្រាកដ.
Possession with intention to ownership	ការកាន់កាប់ដោយមានឆន្ទៈយកជាកម្មសិទ្ធិ ( <i>kar-kan-kab-doy-mien-chhan-tak-yok-chea-kama-sith</i> )	Used in the 2007 Civil Code; the 2001 Land Law uses a similar explanatory phrase for អាគៈមានលក្ខណៈពិតប្រាកដ.
Possession without intention to ownership	ការកាន់កាប់ដោយគ្មានឆន្ទៈយកជាកម្មសិទ្ធិ ( <i>kar-kan-kab-doy-gmien-chhan-tak-yok-chea-kama-sith</i> )	Used in the 2007 Civil Code; the 2001 Land Law uses a similar explanatory phrase for អាគៈមានលក្ខណៈពិតប្រាកដ.
Non-violence or Non-violent	គ្មានហិង្សា ( <i>kmien-hoeng-sar</i> )	One of the criteria for possession under the 2001 Land Law.
Peace or Peaceful	សន្តិវិធី ( <i>san-te-vi-thi</i> )	One of the criteria for possession under the 2007 Civil Code; synonymous with គ្មានហិង្សា.
Open or well-known to the public	ដឹងគ្នាជាសាធារណៈ ( <i>doeng-leu-chea-sar-thea-ranak</i> )	A criterion for possession in both laws.
Continuity or Continuous	គ្មានអាក់ខាន ( <i>khmien-ak-khan</i> ), ជាប់រហូត ( <i>chob-ro-hout</i> )	គ្មានអាក់ខាន is used in the 2001 Land Law, while the synonymous ជាប់រហូត is used in the 2007 Civil Code.
Good faith	សុចរិត ( <i>so-cha-rit</i> )	A criterion for possession used in both laws.
Flawed possession	ការកាន់កាប់ដោយវិការៈ ( <i>kar-kan-kab-doy-mean-vi-ka-rak</i> )	See the 2007 Civil Code.
Possession in bad faith	ការកាន់កាប់ដោយទុច្ចរិត ( <i>kar-kan-kab-doy-tuch-cha-rit</i> )	See the 2007 Civil Code.
Negligent possession	ការកាន់កាប់ដោយមានកំហុស ( <i>kar-kan-kab-doy-mean-kom-hos</i> )	See the 2007 Civil Code.