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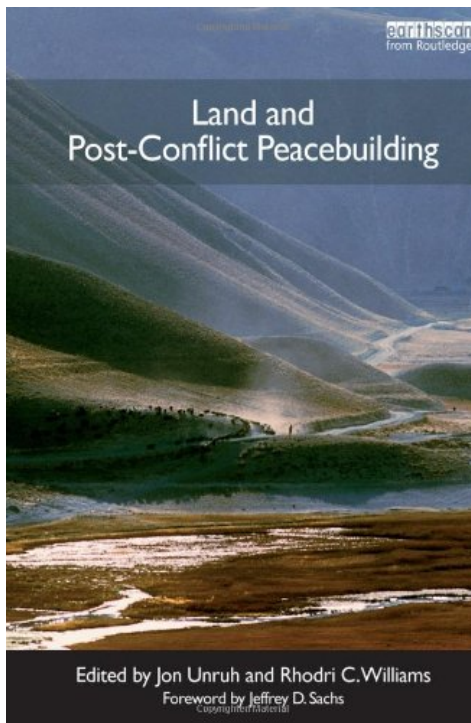
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Land conflicts and land registration in Cambodia

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Manami Sekiguchi and Naomi Hatsukano

Land policy—specifically, providing security of ownership—has been a key to post-conflict peacebuilding in Cambodia since 1979, which marked the end of the Pol Pot regime. However, the attempt to reform the legal system has been so rapid that there has been little chance to incorporate the traditional legal concepts rooted in local society with more modern concepts of land law. As a result, land policy has become a quilt of overlapping systems, some reaching back centuries, some recent: customary law, the French Civil Code, socialism, private ownership under modern law, and land registration systems.¹

Land management in Cambodia has been significantly influenced by foreign donors' promotion of legal standards and systems that prevail in their own countries. Adding yet another layer of legal rules, the resulting ambiguity has led to an increasing number of disputes over landownership and threatens the long-term development of the country. It also fosters government corruption; and the weakest members of society, whose only claim to ownership is based on customary practice, are the most likely to be displaced from their land. It is important for both recipient countries and foreign donors to recognize the importance of the role of customary law and promote a legal system that considers customary legal concepts rooted in the societies of recipient countries.

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¹ *Modern* is used here to designate the legal system that many donors have encouraged Cambodia to adopt in the past twenty years, i.e., a legal regime that supports a free market, protection of private property, civil liberties, and open elections. Specific to the topic of this chapter, such a regime promotes private ownership of land and the recognition of that right through legal titling and the official registration of ownership. The term does not imply any superiority to traditional or customary Cambodian legal systems. Rather, it embodies a set of legal practices that can, and should, complement traditional law.

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This chapter reviews the changing land regimes in Cambodia, from customary law to the French Civil Code, to the destruction of private ownership in the Pol Pot era, to the socialist regime of the 1980s, and to the return of a market economy and private ownership of land in the 1990s. It then analyzes the land disputes that have proliferated due to the ambiguity of rights defined by the conflicting systems. The chapter next examines the failures of the overall land management regime, focusing on the legal system, policy implementation, and dispute settlement bodies. It then discusses the impacts of foreign donors on post-conflict land policy in Cambodia.

CHANGING LAND REGIMES

Under ancient customary law, all land in Cambodia was recognized as the property of the king. People enjoyed the right of possession, which means that they could cultivate land freely. As long as they cultivated continuously, their right of possession was recognized. If the land was not cultivated for three years, the possessor lost the right. This rule applied for centuries, until the colonization by France in the twentieth century (Rendall, Tremblay, and Baars 2003; Pel et al. 2005).

In 1920, during the French colonial period, Cambodia adopted the French Civil Code. Private ownership of land was first recognized in the law. At the same time, possession was still recognized under the Civil Code. After independence from France in 1953, the Western property system remained. According to the 1962 census, 76.9 percent of farm families had documents to prove their land rights issued by the land department, of which 84 percent had been recognized as land owners (Pel et al. 2005). At the same time, there were areas where customary law remained. Cambodia thus entered a transient period in which both modern ownership and the right of possession existed side by side.

Cambodia experienced a bloody purge during the Khmer Rouge regime (Democratic Kampuchea), led by Pol Pot, from April 1975 to January 1979. Private ownership was abolished, and all records related to landownership were destroyed. After the Khmer Rouge fell, the succeeding regime (People's Republic of Kampuchea), supported by Viet Nam, established a socialist economy—in which all land belonged to the state—that lasted through the 1980s. Under the land distribution system called *krom samaki*, farmers were divided into groups to share land, labor, and animals, and land was distributed to those groups regardless of ownership or possession before 1979 (Amakawa 2001a, 2001b).

In 1989, following the withdrawal of Vietnamese troops, a new government was formed, and it began to institute a market economy under the new constitution and a program of land reform. In 1989 the Instruction on Implementation of Land Use and Management Policy was adopted, and ownership of residential land was recognized. This instruction also recognized the right of possession on cultivated land. The 1992 Land Law went further by permitting ownership of residential land. In August 2001 the National Assembly enacted the 2001 Land Law, which expanded ownership of all types of land (Amakawa 2001b; Pel et al. 2005).



Although the government has tried to reconstruct and improve land management since 1989, there have been problems with both the legal system itself and the implementation of its laws. More than 80 percent of the Cambodian population lives in rural areas, where customary law still predominantly prevails. The government failed, in particular, to properly introduce the modern legal system of private ownership in those parts of the country. Beginning in the 1990s, rapid economic growth caused land in rural areas to increase in value and become a target for investors. It became crucial for those holding land under customary law to gain legal title to it to prevent losing it. At the same time, many people were not accustomed to the newly introduced modern system based on the idea of strict ownership. The attempt to rapidly introduce a modern legal system caused confusion and misunderstanding about how legal rights to land could be obtained, leading to numerous disputes.

ANALYSIS OF LAND DISPUTES

Conflicts over land have increased in Cambodia because of the ambiguity of land rights. Recently, as the price of land has risen, disputes over landownership have occurred among the people and villages. And there is a trend of land disputes escalating into violence involving government authorities. For example, one of the typical land disputes involves unregistered lands that become the object of economic land concessions even though people live on the lands. An economic land concession

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is a land transfer in which private investors are allowed to exploit state lands up to 10,000 hectares for industrial and agricultural development.

According to a report by the NGO Forum on Cambodia, serious land disputes occur throughout the country (NGO Forum on Cambodia 2009). The report analyzed 173 disputes reported in local newspapers in 2008.² The average number of affected households in a land dispute is 188 families, and the average size of the disputed area is 276 hectares, while 43 percent of disputes involved less than 50 hectares. The highest numbers of land dispute cases were seen in Sihanoukville, Kampot, and Kandal provinces. The largest cases, in which more than 200 families were involved, occurred in Ratanakiri, Kratie, and Banteay Meanchey provinces. Disputants had official documents to prove ownership in only 2 of 86 cases, and in nearly half of the complaints individuals had no official documents that were recognized by local authorities.

Examples of land disputes

There are many types of land disputes in Cambodia. Most significant are those between people within a village, those between villages, and those that ultimately result in violence. The underlying causes of the disputes are conflicts over rights received under the changing and conflicting land management regimes. Three examples illustrate these different types of land disputes.

Disputes between people in Village P (Siem Reap Province)

In 1987, the commune chief distributed land to one villager (Party A) under the framework of *krom samaki*. When Party A sold the land in 2004, four families (Party B) claimed they had owned the land before 1987, and requested a share of the sale price. The district government granted Party B's request (Pel et al. 2007).

Disputes between villages (Takeo Province)

In 1979, after the Pol Pot regime collapsed, the government of the People's Republic of Kampuchea distributed uncultivated land to Village C under *krom samaki*. In 1983, the district governor decided to redistribute the property to Villages D and E. Villages D and E were issued a certificate for the land in 1986. The chief of Village C disputed the certificate, but the area was occupied and cultivated by Villages D and E. In 2000 the new chief of Village C reignited the dispute by allowing villagers to cultivate the area and keep out Villages D and E. The provincial court decided in 2005 that Village C had to withdraw from the land, but the property is still in dispute.³

² The newspapers are the *Phnom Penh Post* (English), the *Cambodia Daily* (English), *Koh Santepheap* (Khmer), and *Rasmay Kampuchea* (Khmer).

³ This description relies on the authors' interviews with stakeholders in three villages in December 2008.

Violent dispute among people (Banteay Meanchey Province)

In 1997, approximately 200 families (Party F) started to live in Village Q near the Thai border after the area was demined. In 1998, one man (Party G) applied for a title for the land on which Party F, the 200 families, lived. The General Department of Cadastre and Geography and the provincial court awarded the title of ownership to Party G in 1999. Party F disputed the decision, and representatives from the Ministry of National Assembly Senate Relations and Inspection investigated. In 2000, the commune chief issued a letter certifying that Party F had been living in the area, and in 2001, the district cadastral office stated that Party G's title was not valid. But the conflict escalated, and five villagers from Party F died in an attempted eviction in March 2005 (CHRAC 2005).

Causes of land disputes

The examples above illustrate several important problems in managing land in post-conflict Cambodia:

- Inconsistent decisions by different levels of institutions.
- Lack of valid legal documents to prove ownership, possession, or distribution, which leads to evictions without compensation, even if parties have possessed the land for a long time.
- Clash of claims based on the 2001 Land Law versus the customary law of possession.
- Lack of standards to recognize past land use.
- Inefficient dispute resolution systems, driving Cambodians to take matters into their own hands.

FAILURE IN LAND MANAGEMENT POLICIES

Land disputes are the result of a complex web of failures within land management policies in the post-conflict era following 1979. It is necessary to analyze the causes of those failures from the perspective of the legal system itself, its implementation, and dispute settlement bodies.

Legal system

The greatest problem for land management policies in Cambodia is that modern legal systems do not allow for consideration of customary law. In Cambodia it has been traditionally considered that the people could possess the lands of the king by using them continuously. The legal concept of private ownership was not introduced to Cambodian society until the colonial period. Enabling people to claim ownership of land regardless of continuous use was completely different from the customary concept of the right of possession. But it was not a problem

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at that time, before the Pol Pot regime, because land transactions were infrequent, and most people kept using their land in the traditional way.

The customary concept remained in the legal policies and land management systems in the reconstruction process begun after the Pol Pot regime. The 1989 Instruction on Land Use and Management Policy, for example, allows the right of possession on agricultural lands. The 1992 Land Law allowed citizens to gain ownership of land through possession for five years (art. 74), and the 2001 Land Law tried to finish this practice by promoting modern landownership. But the 2001 Land Law, while allowing people to submit five years of possession to be recognized for ownership (arts. 29–30), also required that the possession should be started before promulgation of the 2001 Land Law. In reality, although most land was not transformed to ownership after five years of possession, and those unregistered lands have been subject to disputes, the 2001 Land Law does not clarify the relations with previous norms and laws that allowed customary possessions even before five years passed. This uncoordinated legal regime has caused confusion about when and how the ownership of land can be recognized.

As the examples above illustrate, opposing parties in land disputes often base their claims on different legal grounds. It is quite common for one party to claim possession of land over a long time and another party to claim modern ownership with an official document for the same land. Those with legal titles of ownership usually have an advantage in such disputes. Even though most people in Cambodia still follow the customary legal concept of possession without valid legal documents, modern legal concepts of ownership dominate in the present legal policies and systems and fail to give appropriate consideration to the social impacts of customary laws of possession. For example, in land conflicts involving the eviction of residents for economic development by the state or private sectors, people who possessed lands for certain periods without legal titles often fail to receive reasonable compensation.

In replacing the right of possession, the 2001 Land Law prepared new systems, such as the social land concession (art. 17 and ch. 5) and collective ownership for indigenous people (ch. 3, pt. 2), to protect the land for the poor and the indigenous people who are most vulnerable.⁴ The social land concession provides that vulnerable people receive unused state private land for their family farming.⁵ Collective ownership for indigenous people allows them to continue traditional shifting cultivation (swidden agriculture). These provisions in the 2001 Land Law were prepared after consultation with international organizations and

⁴ Indigenous people live throughout the country. However, a greater number of indigenous people in Ratanakiri and Mondulakiri provinces maintain their lives in a traditional way. The total indigenous population is around 150,000.

⁵ There are two types of state land in Cambodia: state public land and state private land. State public land cannot be sold to the private sector and remains for public use only. State private land can be transferred to the private sector (2001 Land Law, ch. 2).

nongovernmental organizations (NGOs), and were welcome when the law was promulgated (Simbolon 2002). However, the law stipulated only the framework; realizing those articles was another matter. The government has provided social land concessions only for a limited group of people. As for the indigenous people, because of delays in adopting the implementing sub-decree, only pilot project villages and some very remote villages were able to protect their land. Thus these systems have had only a small effect in protecting customary land use.

Policy implementation

There have been several problems with land management practices. First, the officials failed to record the land distribution arrangements made under *krom samaki*. Because the 1992 Land Law allows people to claim ownership through possession for five years, it is imperative to prove when parties began their period of possession. However, it is rare for people in rural areas to have a document proving when they got their land from the government in the 1980s under *krom samaki*. The lack of objective evidence in the form of documents makes landownership and possession rights unclear and causes complications in land disputes.

Second, there have been problems with the implementation of the land registration system. Land registration started in 1989 based on the Instruction on Land Use and Management Policy, and the 1992 Land Law set out the requirements for acquiring ownership through possession. This registration system is called *sporadic registration*. The system created under the Land Law of 2001 is called *systematic registration*. Thus the country has had two parallel processes for registration.

Sporadic registration

Under sporadic registration, an individual in possession of land initiates the process of registering. Rather than following an overall plan (for example, a government mandate to register all land in an area), individuals register their property, plot by plot. The system is expensive and complicated, and out of the reach of the majority of poor Cambodians. Applicants cannot receive certificates for ownership even after the registration process; instead they can receive a certificate of possession, which constitutes official recognition that the land belongs to the specified person.⁶

The key problem with sporadic registration is that the government failed to provide information on how to register land. The 1992 Land Law does not mention how to meet the requirements to qualify for ownership through possession. Besides the lack of information, people who attempted to register were sometimes asked to pay an extra fee from the officers because of budget shortfalls

⁶ When the land registered in sporadic registration is targeted in systematic registration, the land is surveyed again with more accuracy.

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at the district level. The lack of information also impeded the progress of registration. While approximately 4.5 million people applied, it is estimated that only 51,000 people were able to obtain certificates of possession up to 1998 (Pel et al. 2005).

Systematic registration

Under the more efficient and less expensive systematic registration created in 2001, the government designates areas to be registered. All land in the area is surveyed, land documents are analyzed, and titles are granted for parcels. Systematic registration is the more efficient, equitable, and comprehensive method in theory.

The government and some donors supported the earliest efforts of the Ministry of Land Management, Urban Planning and Construction (MLMUPC) to start systematic registration using the latest facilities and satellite pictures. Its pilot project started in 1995, several years before the 2001 Land Law came under discussion.

In 2002, the Land Management and Administration Project (LMAP) officially started with support from the World Bank, Germany, Finland, and Canada. LMAP's overall goals are to reduce poverty, promote social stability, and stimulate economic development by improving land tenure security and promoting the development of efficient land markets. LMAP took the leading role in (1) the development of national policies, a regulatory framework, and institutions for land administration; (2) the issuance and registration of titles; and (3) the establishment of an efficient and transparent land administration system. And, indeed, LMAP succeeded in some respects. It established the Council of Land Policies, prepared necessary sub-decrees, and issued more than 1.1 million titles in the systematic registration in fourteen provinces.

But LMAP itself had limited capacity (Grimsditch and Henderson 2009). First, under the process of LMAP, the lands that are most likely to be disputed are not the target of systematic registration. The people who really needed a title and who were facing land disputes had no access to this program. Second, the delay in state land mapping made it difficult to register the private land near state land or within state land. Third, LMAP had no procedure to register land of indigenous people. The 2001 Land Law promised that indigenous people could register their collective ownership to protect their traditional shifting cultivation. But people had to wait until May 2009, when the Sub-decree on Procedures for Registration of Land of Indigenous Communities was approved. Before this sub-decree, more and more indigenous people's land was sold to outsiders, and their traditional land use was destroyed.

The government terminated World Bank financing of the LMAP on September 2009, because the two parties "could not come to agreement on whether LMAP's social and environmental safeguards should apply in some of the disputed urban areas" (World Bank 2009, 3). After that, the government and other donors (but

Table 1. Authorities to which stakeholders referred land disputes cases in 2008

<i>Type</i>	<i>%</i>
Local authorities (village, commune, and district)	87.86
District/ <i>khan</i> cadastral commissions	4.05
Provincial/municipal cadastral commissions	5.78
National Cadastral Commission	2.31
National Authority for Land Dispute Resolution	8.09
Provincial courts	27.17
Appeals court	6.36
Supreme Court	3.47
National Assembly	5.78
Prime Minister's cabinet	27.75
Provincial hall	49.71
Others	23.70

Source: NGO Forum on Cambodia (2009).

Note: Multiple answers are allowed because stakeholders may visit as many institutions as they think can support them.

not the World Bank) continued the land titling project. This showed that registration in the remaining areas will be more and more difficult as the titling project goes on. The pace of registration will get slower when attempts are made to register the disputed or potentially disputed areas, because it will take more time to survey the land and to settle disputes.

Dispute settlement bodies

People involved in land disputes have resorted to various institutions for resolution (see table 1 for disputes in 2008). Among these institutions, cadastral commissions, the National Authority for Land Dispute Resolution (NALDR), and the courts are the formal institutions that play an important role in dispute settlement. People tend, however, to resort to several authorities or institutions, both formal and informal, because some formal institutions cannot respond quickly enough.

The cadastral-commission system is a dispute settlement institution for resolving disputes over unregistered land.⁷ It has a three-layered process consisting of the district/*khan* cadastral commissions (DKCCs)⁸, the provincial/municipal cadastral commissions (PMCCs), and the National Cadastral Commission (NCC). Whereas the NCC decides cases of land disputes, the DKCCs and the PMCCs try to negotiate agreements between parties (Adler et al. 2006). Thus, in a DKCC, representatives of districts/*khan*, village authorities, and elders become conciliators

⁷ The functions of a commission were defined by the Organization and Functioning of the Cadastral Commission, Sub-decree 47 of August 21, 2002, and Prakas 112 of August 21, 2002, Guidelines and Procedures of the Cadastral Commission.

⁸ A *khan* is a subdivision of a municipality.

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(Pel et al. 2005). They facilitate land disputes when parties file disputes or when disputes are found in the process of sporadic registration. If the parties cannot reach an agreement in the DKCC, the dispute will be forwarded to the PMCC for further conciliation. If conciliation fails in a PMCC, the case is sent to the NCC (Adler et al. 2006). The NCC hears disputes, makes decisions about the validity of evidence and testimony, and renders a binding decision, subject to the parties' right to judicial appeal. The Sub-decree on the Organization and Functioning of the Cadastral Commission allows parties to appeal to the court within thirty days.

An NGO report in 2005 pointed out that the tri-level commissions had serious weaknesses, such as inadequate budgets and human resources, political bias, and a prolonged conciliation process (Pel et al. 2005). As of the end of 2007, the cadastral-commission system had received 4,689 cases of land disputes, of which 1,439 cases had been resolved (NCC 2008). Although the cadastral-commission system has played a role in the facilitation of land disputes, it has not been able to keep up with the increasing number of land disputes.

The NALDR was established in 2006 within the Council of Ministers to solve land disputes that were too difficult to resolve through existing cadastral institutions.⁹ It receives complaints of land disputes from people and governmental institutions such as the MLMUPC, the Ministry of Justice, the Ministry of Interior, and the NCC. The land disputes sent from the NCC are the most common and are mostly concerned with state-owned public land (NALDR 2007). From its beginning to 2009, the NALDR had received 1,271 cases, of which 120 cases were solved and 127 cases were in the process of solution. Additional cases totalling 972 were not initially brought to the NALDR, because these cases were to finish processes of other other institutions, such as the NCC and the court system. The investigative teams for settling disputes include NALDR staff, provincial governors, and officers from relevant ministries. After their field surveys and discussion with team members, they decide the case and implement the decision.

There is also a formal judicial dispute resolution mechanism. It is important because a cadastral commission is not a formal judicial body, and its staff are not trained for adjudication; instead, its main role is facilitation. NALDR is not the institution to overturn the decisions by the court either. However, the judicial system does not work well; many reports by NGOs and international organizations have described corruption in the Cambodian judicial system (Calavan, Briquets, and O'Brien 2004; MacLean 2006; World Bank 2004). Therefore the court's ability to solve land disputes in a peaceful and fair manner seems weak. In the dispute between villages in Takeo Province, discussed above, the provincial court failed to order the enforcement of verdicts and mediate compromise settlements, so the dispute is still unresolved. In the dispute among people that resulted in violence in Banteay Meanchey province, also described above, the appeals court claimed it could decide the case based only on officially recognized documents and did

⁹ NALDR was established by Royal Decree No. NS/RD/0206/067, February 26, 2006.

not adequately consider Party F's claim of possession. Thus functional failures in the judicial system has impeded the effective and fair resolution of land disputes.

ROLE OF FOREIGN DONORS

Since the 1990s, foreign donors have helped to establish land management policies in Cambodia. In the 1980s, Cambodia received little assistance from Western countries due to the perception that the Cambodian government was not legitimate. Until the establishment of United Nations Transitional Authority in Cambodia by the Paris Peace Agreement in 1991, Cambodia had to reconstruct its society and create a land management system by itself. Even though the 1992 Land Law was enacted shortly after the peace agreement, the government drafted the law.

In the 1990s, donors began to assist Cambodia in many areas, including institution building. The 2001 Land Law, for example, was drafted as part of a project in the agriculture sector sponsored by the Asian Development Bank. Many international organizations, bilateral donors, and NGOs joined that consultative process. The World Bank and bilateral development agencies from Germany, Canada, and Finland have assisted the Cambodian government in drafting a new registration system and policies, providing a new technology to demarcate land, and training the staff engaged in land registration. The assistance of those donors has been significant and has helped Cambodia transition to a nation ruled by modern law.

Behind this assistance, there was hope that the introduction of a modern legal system in Cambodia would stimulate investment from abroad and help to reduce poverty. In the late 1990s, donors were overly optimistic about how easily a modern legal system could be introduced and the progress that could be made in land registration. In reality, systematic registration has not progressed as they had expected. Despite some provisions of the 2001 Land Law that attempted to protect those possessing land under customary law, the lack of coordination between the two legal systems has caused confusion. The registration project has succeeded only in limited areas, and most land in Cambodia is still under the rule of customary law. This uncoordinated land management system has caused land disputes, and parties with legal titles under the modern legal system commonly have advantages over parties who have engaged in continuous land use. Although the donors intended a quick reconstruction of Cambodia, the introduction of a new legal system was too rapid, resulting in a threat to people's livelihoods through a loss of lands in land disputes.

If implementing a modern system were to succeed in Cambodia, it had to prepare a feasible alternative system to secure the rights of people who have used the land in customary possession, because to implement systematic registration all over the country at once was impossible. It was necessary to provide a reasonable transition in which information was disseminated to the people. In addition, there must be a simpler way to legally recognize people's customary land use and convert it to modern ownership. For example, though sporadic registration has been generally neglected since systematic registration started, it

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could serve as a supplementary process in the areas where systematic registration has not been implemented.

A society ruled by modern law cannot be achieved instantly. Cambodia has received substantial support from developed countries and multilateral organizations, but it has had many difficulties in navigating the post-conflict period. For such countries, it takes longer for people and society to accept substantial change, and there is no short cut.

LESSONS LEARNED

It is essential to take a society's customary law into account when establishing a new legal system in the post-conflict period. The case of Cambodia illustrates the difficulties of introducing a modern legal system rapidly to a society that has traditionally followed customary law, especially when the society possesses little implementation capacity and minimal human resources. The first post-conflict land management policies based on modern law, the 1992 Land Law, and the sporadic registration system all acknowledged customary law. In the 1990s Cambodia began to be influenced by foreign donors who wanted to promote a modern legal system more rapidly, as seen in the 2001 Land Law, leaving the effects of previous laws and policies ambiguous. This rapid shift of legal frameworks has caused confusion among the people and land disputes in Cambodian society.

Cambodia's experience indicates the importance of taking time to review existing laws at the local level before introducing new laws, policies, and systems. Even though legal records and systems were devastated by armed conflict, customary rules and systems remain and play significant roles. In introducing the new laws, policies, and systems in post-conflict countries, it is therefore important to consider their impacts and establish statutory legal systems that can coexist with customary law. If foreign donors promote the introduction of modern legal systems that are common in their own countries, they also need to consider the roles of customary laws and assist the beneficiary country to rebuild its customary legal systems.

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