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POLICY FOR THE POOR?
Phnom Penh, Tenure Security,
and Circular 03



the Urban Initiative



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POLICY FOR THE POOR?

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EXECUTIVE SUMMARY

Phnom Penh's urban poor are under threat. Over the past two decades, 11% of the city's current population has been displaced, often forcibly evicted, to poorer futures. A key government argument – when such arguments have been provided – has been that many of those affected have been illegal squatters, living on state public land. Habitually, however, there is no assessment of whether or not the occupants have rights to the land as legal possessors.

In May 2010, the Royal Government of Cambodia approved *Circular 03 on Resolution of Temporary Settlement on Land Which Has Been Illegally Occupied in the Capital, Municipal, and Urban Areas (C03)*. In the context of on-going tenure insecurity among Cambodia's urban poor, the Circular lays down a process through which the issue of occupation of state public land is to be 'resolved'. With support from Germany through its development agency, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), C03 implementation has taken place in Battambang provincial town since late 2010. Implementation has commenced in Phnom Penh too, though seemingly conducted unilaterally by the Municipality of Phnom Penh.

While implementation continues, fundamental questions remain regarding the content of the Circular itself and the impacts of its implementation. The aim of this report is to highlight some of the issues arising from the Circular as a policy document, and draw attention to the opportunities and risks arising from its implementation. It also aims to provide stakeholders in urban development in Phnom Penh with a better understanding of the extent to which Circular 03 meets the required legal standards to genuinely protect the rights of

the urban poor through increasing their tenure security, and how practicable a tool it is for that purpose.

Section 1 includes the introduction and methodology of the report. It also highlights some key issues related to terminology, namely the problems surrounding terms such as 'poor', 'informal' and 'temporary' settlement, noting that the legality of a settlement should be based on the existing Cambodian legal framework; the physical appearance of a structure or the living standards of the occupant have no bearing on the legal status of a particular parcel of land. The section concludes by providing a basic overview of the hierarchy of legal documents in Cambodia.

Section 2 of the report outlines the context into which Circular 03 enters. Starting from the reconstitution of private ownership after the Khmer Rouge, it covers the key features of recent donor-supported programmes in the Cambodian land sector. It also shows how large portions of the urban poor have alternately been ignored by or excluded from interventions in the land sector. Exclusion of poor settlements from systematic land registration is highlighted as a key failure of land sector programmes, contributing to widespread tenure insecurity in urban areas.

The section continues by outlining the existing legal framework in Cambodia's land sector. Focusing on legal possession rights versus illegal occupancy, as well as what constitutes state public land, the section introduces crucial terminology and the legal framework for understanding Circular 03. It is shown that Circular 03 for the first time outlines a process within Cambodia's legal framework for converting illegal occupation of state land into legal



Figure 1: Many have lived in 'poor settlements' for decades

occupation or ownership. Previously, households illegally occupying state land had no such rights. The Circular also provides a basic framework for conducting resettlement of those who cannot be granted on-site upgrading. However, a Circular is located low in the Cambodian legal hierarchy, and any measures outlined in the Circular must therefore be implemented in accordance with higher legal documents, specifically the 2001 Land Law, as well as Sub-decree N°118 and Prakas N°42 which further outline the legal framework for state land management.

The section concludes by noting how Circular 03 enters the picture in a context where urban poor settlements have continued to exist and even grow in the absence of a clear policy to deal with them. Due to the lack of an accessible database on state land and properties, it is difficult to verify which areas have so far been officially demarcated as state land, and hence which households within urban poor settlements occupy land illegally. For those whose occupation is indeed illegal, the Circular may provide options that can eventually lead to more secure tenure. However, a key challenge in

implementing the Circular will be in ensuring that households who may have claims as legal possessors but cannot access the land registration system are not automatically labelled as informal settlers for the simple fact that they have been overlooked by the registration system.

Section 3 focuses on the Circular itself, how it came about, and its implementation to date in both Battambang and Phnom Penh. It shows that Germany and its development agency, GIZ, played a key role in the approval of the Circular, amidst concerns from both other development partners and civil society actors. A detailed analysis of the Circular finds that the document lacks clarity in key areas, failing to provide precise definitions. In addition, while it occasionally references the existing legal framework, particularly in the annexes, it does not explicitly specify that the Circular will be implemented in accordance with the 2001 Land Law, Sub-decree N°118 and Prakas N°42. Provisions related to future land use plans and the identification of 'resolutions' for households on state public land are particularly vague, with no indication given of when a particular resolution –

on-site upgrading, relocation, or 'other' – might be 'suitable'. This lack of clarity may cause significant challenges during implementation of the Circular.

An overview of on-going C03 implementation in Battambang City reveals the importance of political will for C03 implementation that leads to positive outcomes for households targeted. The city's de facto moratorium on evictions combined with long-term German development assistance to Battambang Municipality have contributed to an environment in which a multi-stakeholder stakeholder approach, as outlined in the Circular, has been able to take root. However, two years on, results in the form of long-term tenure security for targeted households remain elusive.

In contrast to Battambang, the context for C03 implementation in Phnom Penh is found to be significantly different. The fast rate of urbanisation has put enormous pressure on land in the capital, with commercial interests highly prominent in driving urban development leading to displacement of the city's poor from the centre to the outskirts. The on-going forced evictions of residents have contributed to an environment characterised by deep mistrust between the authorities, communities, and civil society actors. The Municipality of Phnom Penh's apparent unilateral implementation of Circular 03 has, as the report finds, done little to alleviate that mistrust.

Two case studies from Phnom Penh highlight the complexities involved in determining the land rights of households in urban poor settlements. The first case study raises important questions about determination of the rights of poor settlers vis-à-vis commercial development of state public land. The second case study underscores how lack of clear legal definitions for what constitutes state public land complicates assessment of households' claims to land, further emphasizing the importance of adjudication of land in accordance with the existing legal framework.

In conclusion, Section 4 of the report identifies both opportunities and challenges involved in C03 implementation in Phnom Penh. A key opportunity presented by the Circular in Phnom Penh, and elsewhere, is the possibility of formalising households on state public land through on-site upgrading under the auspices of the Circular, as well

as facilitating better organised resettlement, with improved resettlement site conditions. However, given the history of evictions in Phnom Penh, there are also legitimate fears the Circular will be used as a tool cement the image of the urban poor as illegal, in turn enabling their eviction. On-going unilateral implementation of the Circular as well as sporadic evictions and lack of acknowledgment of the rights of the urban poor indicate a lack of political will to address the situation facing the poor in an equitable and legal fashion. As such, the report suggests the risks of C03 implementation in the capital may outweigh the benefits at the present time, at least until the political environment is better suited for its application.

The report concludes by outlining recommendations for key actors involved in C03 implementation, in particular the Municipality of Phnom Penh (MPP), the Ministry of Land Management, Urban Planning, and Construction (MLMUPC), as well as development partners, on steps towards ensuring C03 implementation contributes to the Cambodian Government's long term goal of poverty reduction. The MPP is urged to commit to transparent, multi-stakeholder C03 implementation, a moratorium on evictions during implementation, and to ensure that all identification of state land is done in accordance with existing mechanisms and definitions as set out in existing law, i.e. the 2001 Land Law, Sub-decree N°118 and Prakas N°42, and that no households with legal possession rights are subjected to C03 implementation. Conducting state land identification and mapping alongside C03 implementation is a key recommendation for the Royal Government of Cambodia (RGC), combined with increased transparency in systematic land registration, and registration and titling of all private lands identified in urban poor settlements. Finally, development partners are urged to develop a framework for monitoring C03 implementation as well as lack of implementation in applicable cases, and make any funds contributed towards implementation contingent on full transparency, adherence to the existing legal framework, and a multi-stakeholder approach. In addition, all stakeholders are encouraged to commit to programming with a wider urban poor focus, which also includes interventions to secure tenure and improve living standards of poor urban residents with legal possession rights.

ACRONYMS

ADB	Asian Development Bank
CEDT	Community Empowerment and Development Team
CMDP	Community Managed Development Partners
C03	Circular 03 on Resolution of Temporary Settlement on Land which has been Illegally Occupied in the Capital, Municipal, and Urban Areas
DED	Deutsche Entwicklungsdienst
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
KAS	Konrad Adenauer Foundation
LASSP	Land Administration Sub-Sector Program
LMAP	Land Management and Administration Project
MIME	Ministry of Industry, Mines, and Energy
MLMUPC	Ministry of Land Management, Urban Planning, and Construction
MPP	Municipality of Phnom Penh
NGO	Non-Governmental Organisation
PPWSA	Phnom Penh Water Supply Authority
RGC	Royal Government of Cambodia
SOC	State of Cambodia
SLMC	State Land Management Committee
SLR	Systematic Land Registration
SLWG	State Land Working Group
TWG	Technical Working Group
UNESCAP	UN Economic and Social Commission for Asia and the Pacific
UNOHCHR	UN Office of the High Commissioner for Human Rights
UPDF	Urban Poor Development Fund
WB	World Bank

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INTRODUCTION

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Tenure security, or more specifically lack thereof, is a pervasive problem in Cambodia. While rural households are driven from their land in the thousands to make way for Economic Land Concessions¹ and other types of developments, urban residents, particularly the poor, continue to live with insecure tenure. Over 150,000 people in Phnom Penh – representing 11% of the capital’s current population – have been displaced over the past two decades.²

The Circular on Resolution of Temporary Settlement on Land Which Has Been Illegally Occupied in the Capital, Municipal, and Urban Areas (C03) was developed following a series of violent forced evictions that shook Phnom Penh in 2009. Initially foreseen as a tool to standardize the treatment of evictees, it has since first conception taken on a wider role defining measures ranging from identification of so-called illegal settlements, to provision of on-site upgrading and resettlement combined with basic service provision. Many see the Circular as an opportunity – perhaps the only opportunity – for households located on state public land to be rendered legal.

Identification of settlements on state public land is a politically complicated exercise in Cambodia. Despite the efforts of donor-supported projects in the country’s land sector there has been very little progress in state land management, to the effect that no publicly accessible database on state land exists. Simultaneously, land registration, for the last decade conducted as systematic land registration (SLR), but more recently as part of the Prime Minister’s Directive 01, has focused mainly on rural areas, leaving much of Phnom Penh untitled. As such, the status of the land in many urban poor settlements remains unknown.

Even before its adoption, the Circular saw strong buy-in from Germany, a central donor to the Cambodian land sector, who made implementation of the Circular a key part of its continued commitment to support the sector. Following its adoption in May 2010, the Circular has been used in a German development agency Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)-supported multi-stakeholder process to formalise communities in Battambang.³ While stakeholders report general satisfaction in the process, crucially none of the nine target communities have so far had their tenure secured, and the process has yet to be completed.

In contrast, the Municipality of Phnom Penh (MPP) appears to have largely implemented the Circular unilaterally with little oversight by donors, civil society or communities. According to the MPP website, identification and data collection of all ‘temporary settlements’ has been completed in all nine Khans (districts) of the city, while data collection on individual households has been completed in three Khans, and partially completed in one Khan. The impacts of C03 implementation in Phnom Penh are however yet to be determined. While in Battambang C03 implementation has led to a de facto city-wide moratorium

1 LICADHO (2009) *Land Grabbing & Poverty in Cambodia: the Myth of Development*.

2 Sahmakum Teang Tnaut (2011) *Facts & Figures #19: Displaced Families: Phnom Penh 1990-2011*.

3 GIZ was formed in 2010 following the merging of Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), Deutsche Entwicklungsdienst (DED), and Internationale Weiterbildung und Entwicklung (InWEnt). This report will mainly refer to GIZ, although occasional mentions to GTZ and DED may feature in reference to work done by either agency prior to 2010.



Figure 2: Many homes in Phnom Penh are located on or by canals

on evictions, evictions continue in Phnom Penh at a steady pace and there appears to be little political will to deal with poor settlements in a transparent, multi-stakeholder fashion following the existing legal framework. Nevertheless, several donors have expressed interest in becoming involved in further C03 implementation in the city.

This report was conceived to provide stakeholders in urban development in Phnom Penh a better understanding of the extent to which Circular 03 meets the required legal standards to genuinely protect the rights of the urban poor through increasing their tenure security, and how practicable a tool it is for that purpose. It was written against the backdrop of donor funds potentially being directed to C03 implementation in Phnom Penh, with the aim of providing an insight to both donors and other stakeholders in the process about how the Circular has been implemented so far, and what risks and opportunities this presents for the future.

1.1 METHODOLOGY

OBJECTIVES

The objective of this report is to examine the extent to which Circular 03 meets the required legal standards to genuinely protect the rights of the urban poor through increasing their tenure security, and how practicable a tool it is for that purpose. The specific objectives of the research were as follows:

- To conduct a detailed analysis of Circular 03 in order to assess its legal and policy implications;
- To review the context in which the Circular is implemented as well as implementation to date in order to assess the practical opportunities and challenges presented by widespread C03 implementation in Phnom Penh; and
- To develop findings and recommendations for key stakeholders which may help ensure C03 implementation leads to positive outcomes for the urban poor.

RESEARCH APPROACH

A four-part methodology was developed to reach the above objectives:

1. Desk review and legal analysis of the Circular
2. Interviews with key stakeholders
3. Field visits to target communities in Battambang and Phnom Penh
4. Community mapping and surveying in two communities in Phnom Penh

DESK REVIEW AND LEGAL ANALYSIS

A desk review was conducted which took into account documents regarding the Circular that were produced over the last two years by civil society organisations and development partners, in particular those that came out of public consultations in 2009. The desk review also considered media reports and statements of the MPP regarding the Circular, and in order to conduct a legal analysis of its broader legal implications, a review of Cambodia's existing legal framework was also conducted. The analysis of the Circular relied mainly on the unofficial English translation of the Circular published by the Council for Land Policy, but also on other informal translations when the English meanings were not clear.

INTERVIEWS AND FIELD VISITS

To gain a sense of how the Circular is being implemented in Battambang, a field visit was conducted in June 2012 which included visits to three communities (Ponleu Prek Preah Sdach, Santepheap, and Ekapheap). Twenty communities in Phnom Penh were also visited between July and December 2012. During the visits, community representatives and members, and occasionally village chiefs, were interviewed in Khmer through an interpreter.

Key government and civil society stakeholders in the implementation of the Circular were also interviewed. These included: representatives of Battambang Municipality; staff at GIZ, Office of the High Commissioner for Human Rights (UN OHCHR), Habitat for Humanity, World Vision; and representatives of local non-governmental organisations (NGOs) Urban Poor Women Development, Community Managed Development Partners (CMDP) and Community Empowerment and Development Team (CEDT); as well as staff and consultants at Vishnu Law Group. Interviews with civil society representatives were conducted in English, while interviews with government representatives were conducted in Khmer through an interpreter. All interviews were conducted on a confidential basis to allow interviewees to speak their mind without fear of repercussions. Staff at the Ministry of Land Management Urban Planning and Construction (MLMUPC) and the MPP were approached for information, with limited success.

Community surveying and mapping was conducted in two Phnom Penh communities. Following field visits to potential target communities, four communities were invited to an information meeting regarding the proposed project. Following the meeting, two communities submitted written expressions of interest to The Urban Initiative, after which community mapping and surveying activities commenced. Focus group discussions were held to get a sense of the overall community history, combined with individual household surveys of all community members. Given that both target communities were based on savings groups, not all households in the settlement were members. Only members' households were surveyed. Community mapping was conducted together with community members, first by sketching a draft map based on a Geoeye satellite image (0.6m resolution), and later by confirming house locations and sizes using a handheld GPS (10m circular error) and laser measure before digitizing the maps. Completed maps and data were submitted to the communities for verification. Due to the unavoidable GPS inaccuracy, the maps presented in this report should be considered indicative, and certainly not definitive proof of the legal status of a particular parcel of land.

LIMITATIONS

Every effort has been made to present a truthful picture of the opportunities and challenges presented by Circular 03, though the research was constrained by the lack of publicly accessible data and maps regarding land ownership in Cambodia, as well as by the researchers' inability to gain access to government staff working on the Circular. As such, some conclusions may be based on conjecture or extrapolation based on secondary sources. The research was also limited by the amount of time and resources available for field visits and interviews with communities, although the research endeavoured to get an accurate sense of the impacts of C03 implementation at the community level by interviewing a variety of communities in Phnom Penh in particular.

1.2 NOTES ON LANGUAGE AND TERMINOLOGY

POOR SETTLEMENTS

Across the world, the urban poor and their homes go by a variety of names. For some they are slum dwellers, for others informal settlers, some call them marginalized or excluded, others say illegals, yet still more simply call them poor. Each label hides as much as it explains, and as with any label, implies an element of uniformity across individuals, households, and communities. The reality is often remarkably different, with some 'poor settlements' constituting sprawling neighbourhoods, encompassing private residences and places of business, as well as schools, hospitals and other social services, while others may be just a handful of homes constructed on once vacant land. Some settlements are dominated by poor quality housing, utilising salvaged materials such as wood, cardboard and corrugated steel, whereas others may have become well established and include well-built, permanent structures.

For the purposes of this report, the distinction between 'legal' and 'illegal' is critical. The term 'urban poor settlement' will be used as a general descriptive term of poor settlements in the city, without any assessment or implication as to the settlement's – or individual households' in the settlement – land rights, or lack thereof. The term 'community' will be used for a settlement that is organised, e.g. through a savings group, and thus has an element of organisational structure.

The term 'informal settlement', although not clearly defined in Cambodian law, will be used to refer to settlements that are not legal, i.e. those who do not have legitimate land rights as legal owners or possessors under the Cambodian Land Law (2001). Such settlements may be illegal if they have been established on land that is the legal property of the state, or that of another private individual. The term is often used interchangeably with terms such as 'squatter settlements', 'illegal settlements', and 'temporary settlements', and is frequently invoked by the Cambodian Government and its administration. Indeed the

final version of Circular 03 uses the term ‘temporary settlements’. As the report will show, however, it can be very difficult to establish whether an urban poor settlement is also an informal settlement. In addition, the rights of individual households within a particular settlement may differ based on the exact location of their respective land parcels.

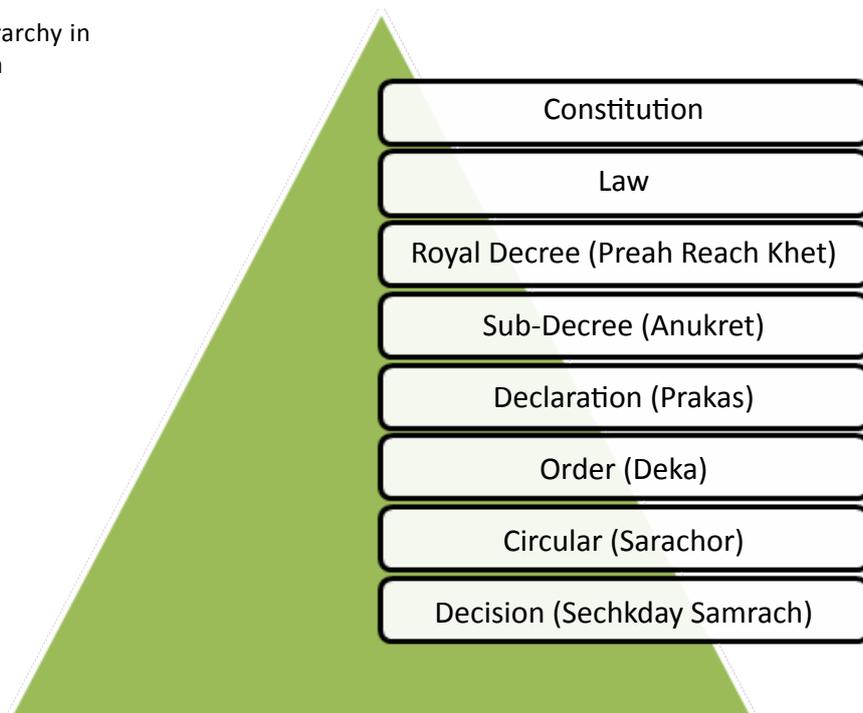
As a result, the use of the term ‘temporary settlement’ throughout the Circular is problematic, as it implies that a settlement undergoing any step under the Circular is by definition ‘temporary’, and thus illegal. For example, although Step 1 of the Circular calls for data collection on numbers of ‘temporary settlements’, it is only under later steps that land in targeted settlements is adjudicated and classified. The terminology in the introduction to the Circular further implies that poor settlements in general are ‘temporary’.

The authors of the report would hence like to note that whether or not a settlement – or a household within a settlement – is legal or illegal (‘temporary’, ‘informal’), should be based on the existing Cambodian legal framework. The physical appearance of a structure or the living standards of the occupant have no bearing on the legal status of a particular parcel of land.

LEGAL HIERARCHY

The below diagram outlines the legal hierarchy in Cambodia. The Constitution is the foremost legal document in the country, followed by laws. Sub-decrees and *prakas* (declarations) are common instruments used to add detail or processes to operationalise specific provisions contained in laws. Circulars are located relatively low in the legal hierarchy, and are generally issued by a ministry or government authority in order to clarify a point of law or give instructions.

Figure 3: Legal Hierarchy in Cambodia



1.3 ABOUT THE URBAN INITIATIVE

The Urban Initiative (The UI) is the policy and research arm of local urban NGO Sahmakum Teang Naut (STT). The UI works with highly qualified consultants from around the world to bring light to the latest developments in the Cambodian urban sector. The UI was set-up in 2011, and has previously e.g. provided commentary on the draft Sub-Decree on Urbanisation of the Capital City, Towns, and Urban Areas, as well as published a report on urbanisation in Cambodia's secondary cities entitled '*Growing Pains: Urbanisation and Informal Settlement in Cambodia's Secondary Cities*'.

STT is a Cambodian organisation founded in 2005 and registered with the Ministry of Interior in 2006. STT's vision is a society in which urban inhabitants enjoy adequate housing within a sustainably developing city. Its mission is to provide pro-poor technical assistance for housing and infrastructure and to inform dialogue and raise awareness about urban issues. For more information visit www.teangnaut.org

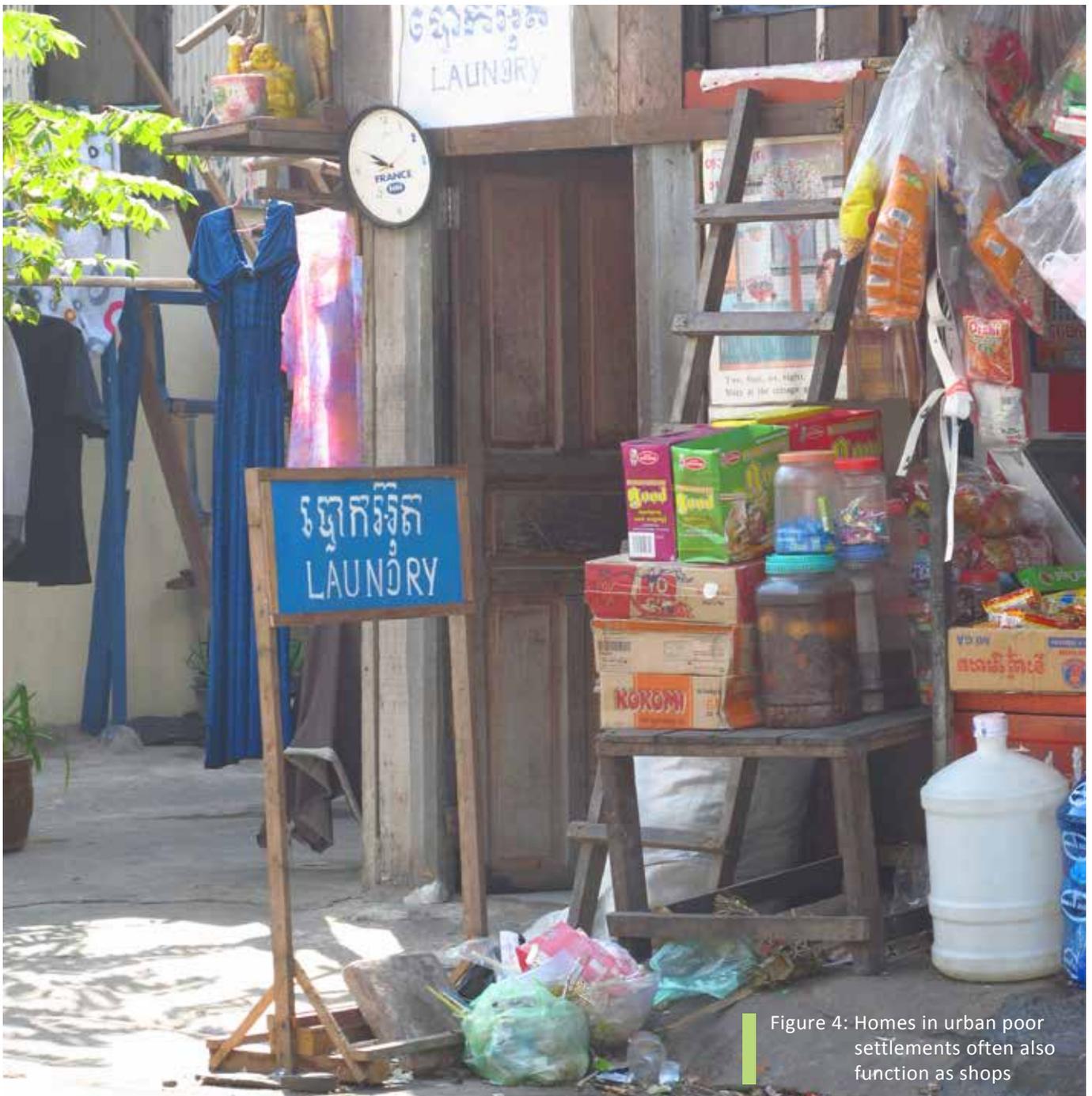


Figure 4: Homes in urban poor settlements often also function as shops

2.1 NATIONAL CONTEXT

RECONSTITUTING PRIVATE OWNERSHIP AFTER THE KHMER ROUGE

In April 1975, Phnom Penh fell to the Khmer Rouge. Soon after, the city was cleared of all of residents, who were pushed out and forced into agricultural collectives, in some cases far from their homes in the city. This process was repeated in all urban areas, as the radical Democratic Kampuchea regime sought to transform the country into a strictly agrarian communist society. The rise of the regime was followed by the complete nationalisation of all privately held land and all private ownership was abolished.

After the fall of the Khmer Rouge in 1979 and the establishment of the People's Republic of Kampuchea (PRK), people began to slowly return to their homelands, re-populate the cities, and in some cases settle wherever they could find productive and safe land. During this time, land still belonged to the state, although people were allocated agricultural land through so called 'cooperative groups', through which they were largely allowed to farm and control land privately. In 1989, the country took a significant step towards liberalising its economy, and away from the Marxist-Leninist model that had continued during the PRK period. The first decrees that began to reconstitute citizens' rights to privately own their land and residences were issued soon after the establishment of the new State of Cambodia (SOC).

In April 1989, the SOC passed a sub-decree recognizing ownership of residential properties as well as the right to transfer that property through succession.⁴ Following this, a new land management policy was adopted confirming that the state was the default owner of the country's land, but authorizing the right to acquire *ownership* of residential land. This was distinguished from *possession* of agricultural land, which could be used and controlled privately as long as it was being put to productive use.⁵ In 1992, the country adopted its first full land law since before the Khmer Rouge took power. The law set out the means by which ownership could be acquired, principally: succession, contract, or by converting 'temporary possession' into full ownership.⁶

Subsequent to the drastic population transfer which followed the fall of the Khmer Rouge, Cambodia has continued to experience a relatively steady movement of people from rural to urban areas, where job opportunities are more favourable and wages higher. This has resulted in the somewhat haphazard settlement of some parts of Phnom Penh and other urban areas. In an attempt to bring order to the Cambodian land sector, the Ministry of Land Management, Urban Planning, and Construction (MLMUPC) was established in 1999 and given competence to govern land administration and management issues.⁷ A

4 People's Republic of Kampuchea, Council of Ministers (1989) ANK N°25, *Sub-decree N°25 on Providing House Ownership to the Cambodian Population*, 22 April 1989.

5 People's Republic of Kampuchea, Council of Ministers (1989) SNN N°03, *Instruction N°03 on Implementation of Land use and Management Policy*, 3 June 1989.

6 RGC (1992) *Land Law Article 59*.

7 RGC (1999) *Law on the Establishment of the Ministry of Land Management, Urban Planning and Construction*.

new Land Law was adopted in 2001, which built on the 1992 law and filled the considerable gaps therein. Amongst the new provisions contained in this law, a foundation was provided for a national land register and land registration programme, which was later elaborated by sub-decree, and replaced the old and inefficient sporadic registration system. This constituted another critical step towards clarifying ownership status of all land plots in Cambodia.

A NEW LAND ADMINISTRATION

The development of Cambodia's land administration system has moved forward in great leaps and bounds over the last fifteen years, and in particular following the adoption of the new Land Law. With the support of a core group of development partners, the Cambodian Government has been working to develop its policies, legal framework and practical capacities to push through an ambitious scheme of land reforms. The main pillars of the government's land programme were brought together in the MLMUPC's Land Administration, Land Management and Distribution Program. The first activities under this programme were conducted through the multi-donor supported Land Management and Administration Program (LMAP).⁸ LMAP began operations in 2002, and ran up to the end of 2009, when it was cancelled prematurely by the Cambodian Government after a World Bank Inspection Panel investigation found several breaches of the World Bank's safeguard policies.⁹

The project had a number of components, principally: developing land policy and regulatory framework; institutional development of the MLMUPC; land titling and development of a land registration system; strengthening dispute resolution mechanisms; and state land management.¹⁰ The current SLR process was developed through LMAP, including the drafting of the legal framework and training of staff, implementation of the registration programme, and delivery of titles. The project has since transitioned into the Land Administration Sub-Sector Program (LASSP), and has lost the financial support of the World Bank, but continues to issue titles in 16 out of 24 provinces across the country (including the capital Phnom Penh).¹¹

LMAP and LASSP have had considerable success in developing the legal framework and institutional capacities for conducting systematic land registration (SLR) in Cambodia. The project has also succeeded in issuing a large number of land titles, mainly in rural areas. However, in recent years a number of critical reports have highlighted significant issues in the implementation of its land administration activities. Departures from the legal framework that should be implemented to protect the rights of legal possessors have been documented, despite the fact that the Land Law contains crucial provisions for the protection of legal possessors who have yet to receive land titles. There are also considerable concerns that the absence of coordinated and transparent state land mapping leaves many people open to unjust accusations of residing on state land. In addition, it has been argued that SLR has focused on rural areas with low levels of tenure insecurity, while urban areas with more pressure on land have been overlooked.

Another prominent criticism, particularly relevant in the urban sector, has been that from the outset it was decided that the project would not cover informal settlements, unless there was agreement with the government to title in such areas.¹² In 2001, when LMAP was designed, it was envisioned that a separate

8 Initially the project was financed by the World Bank, and received technical support from the German technical agency, GTZ (since renamed GIZ), and Finland's Ministry of Foreign Affairs. The Canadian International Development Agency (CIDA) joined later and contributed both financial support and technical assistance.

9 World Bank (2009) *Statement from the World Bank on Termination by Royal Government of Cambodia of the Land Management and Administration Project*, 6 September 2009.

10 World Bank (2002) *Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (US\$24.3 Million Equivalent) to The Kingdom of Cambodia for a Land Management and Administration Project*, 29 January 2002 (p.2).

11 Ministry of Land Management, Urban Planning, and Construction (2011) *Land Administration Sub-sector Programme Newsletter, Land is Life, November 2011* (p.3).

12 World Bank (2002) *Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (US\$24.3 Million Equivalent) to The Kingdom of Cambodia for a Land Management and Administration Project*, 29 January 2002 (p.20).

donor supported¹³ project would focus on informal settlements and seek to either agree land sharing arrangements or facilitate resettlement under appropriate conditions.¹⁴ Unfortunately, the project was never realised. Likewise, a draft National Housing Policy developed in 2004 and re-visited in 2010 proposed solutions for dealing with informal settlements through mechanisms such as land sharing, site upgrades and resettlement, but this also languished. Inevitably this left a large gap as far as informal settlements were concerned, and to date illegal settlers have no legal protections, as outlined below.

The project, as mentioned above, was also subject to a highly critical World Bank Inspection Panel report that highlighted serious violations of the Bank's policies. The investigation came on the back of pressure from a number of civil society organisations,¹⁵ and, ultimately, a complaint from residents of the Boeung Kak lake area of Phnom Penh. The area around the lake was adjudicated under LMAP but subsequently declared state property. The area was then leased to a private company and residents issued with eviction notices. The complainants stated that they were unfairly excluded from the process and the adjudication of their land did not follow the appropriate legal process. They held that this weakened their position, and the Inspection Panel agreed.¹⁶

The case of Boeung Kak is not an isolated event. Despite the lack of transparency in the implementation of SLR, and hence also information about which areas have not been titled, these types of exclusions from the titling system have been observed in multiple areas, and it has been noted that they disproportionately concern poor communities. Many of these communities are also located in Phnom Penh, where a combination of historical factors, strong urban growth, and the inability of LMAP and LASSP to address the situation have led to particularly difficult situation in the land sector.

PHNOM PENH REPOPULATED

Cambodia's capital Phnom Penh is the country's most populous city, as well as the political, administrative, and cultural centre of the Kingdom. Although emptied by the Khmer Rouge, the regime's fall saw previous and new residents promptly returning to Phnom Penh. During the 1980s, some returnees were authorised to occupy buildings on a first-come, first-served basis. Buildings in the city's administrative centre were in demand, with many buildings sub-divided and even sold. Once existing buildings were occupied, people began settling on vacant land, creating many of the settlements today considered illegal. These settlements grew over time as rural migrants came to the city in search of economic opportunities, as well as with internally displaced people and returnees from the refugee camps settling in Phnom Penh.

Until the end of the 1990s, the Municipality of Phnom Penh (MPP) refused to recognise the majority of the urban poor as legitimate residents in the city. Instead, several violent evictions took place in Phnom Penh, often in the name of 'beautification'. A breakthrough for the rights of the urban poor came in 1999, when the MPP with support from UN-Habitat developed an Urban Poverty Reduction Strategy to improve access to basic social and physical infrastructure, enhance economic opportunities and strengthen participatory governance mechanisms.¹⁷ However, in keeping with the framing of poor settlements as having illegal status, the Prime Minister redefined 'squatter settlements' as 'temporary settlements' and emphasised a new policy of relocating the poor to 'liveable communities' at the outskirts of the city¹⁸ the following

13 UN-Habitat, United Nations Development Project (UNDP), and the UK's Department for International Development (DfID).

14 The proposed project was called the Urban Poverty Reduction Project, and is discussed in: World Bank (2002) *Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (US\$24.3 Million Equivalent) to The Kingdom of Cambodia for a Land Management and Administration Project*, 29 January 2002 (p87).

15 See for example: Grimsditch, M. & Henderson, N. (2009) *Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector*, Bridges Across Borders Southeast Asia, Centre on Housing Rights and Evictions and Jesuit Refugee Services.

16 World Bank Inspection Panel (2009) *Cambodia: Land Management and Administration Project*.

17 MPP (1999) *Urban Poverty Reduction Strategy for Phnom Penh*.

18 Reports such as Sahmakum Teang Tnaut (2009) *The 8 Khan Survey* and Sahmakum Teang Tnaut (2012) *Facts & Figures #21: Resettling Phnom Penh: 54 – And Counting*, provide details on how most of the sites are far from 'liveable' and that living standards of residents generally drop compared to pre-eviction levels.

year.¹⁹ Subsequently, some 50 relocation sites have been established around Phnom Penh, although it is widely acknowledged that many ‘relocations’ have been little more than forced evictions.²⁰

Over the last decade, the city has thus seen a major shift of its urban poor settlements from the inner to the outer districts (Khans). At the same time, many of the remaining urban poor settlements continue to be considered illegal and are subject to eviction, or threats thereof. Although reliable figures are extremely hard to come by, it is estimated some 150,000 people have been displaced in Phnom Penh alone over the past two decades, representing 11% of the city’s current population.²¹ Amnesty International stated in a 2008 report that between 2003 and 2008 some 30,000 people were forcibly evicted from the capital,²² while another estimate puts the figure of those evicted in Phnom Penh between 1998 and 2003 at 11,000.^{23,24} Currently, at least 36 settlements have received eviction notices, while some 100 report rumours of impending eviction.

Although the causes of these evictions are myriad, the shortcomings of LMAP’s and LASSP’s design and implementation highlighted above, vis-à-vis the increased investment into Cambodia following the return of nominal peace and stability, have played a key role. Compared to a goal of surveying and adjudicating 198,000 land plots between 2002 and 2007, with at least 80% (or 158,400) of these titles distributed by the end of the project²⁵, at the end of 2011 the figure for land titles issued in Phnom Penh was only 62,934,²⁶ far short of initial targets and a sign of the extremely challenging environment for land registration in the capital. A number of high profile cases in the same period also show how poor communities have been denied adjudication under the law and subsequently faced eviction.

Poor communities in city’s central Tonle Bassac area have been particularly targeted. In 2004, residents of Koh Pich island were issued eviction notices to make way for the development of a luxury satellite city, Diamond Island, despite having well-documented rights to their land. Similarly the nearby Group 78 community was evicted in 2009 following repeated rejections of their applications for land titles and despite an application to the Cadastral Commission to decide on the land’s legal status and ownership. In total, at least a dozen communities – equivalent to over 12,000 families – were evicted from the Bassac area between 1998 and 2009.²⁷ When SLR was finally conducted in the area in 2009 and 2010, most of the land already belonged to ‘developers’, while seven areas inhabited by poor communities were excluded from the process on account of being too ‘complicated’ to adjudicate.²⁸

A review mission by the World Bank highlighted the issue of exclusions in a 2009 report, stating that: ‘the relevant municipal authority has granted itself the unilateral right to excise portions of lands surveyed by the Cadastral Administration. In doing so, it has decided not to apply the systematic titling to those excised areas.’ The report also states: ‘Ensuring that any process undertaken by any authority to excise or exclude a portion of land from the systematic titling area is transparent, public, and widely disseminated is an important assumption strongly grounded in the applicable law supported by the LMAP.’²⁹ Unfortunately

19 Fallavier, P (2003) *Phnom Penh, Cambodia* Summary Extracted from UN-Habitat (2003) *Global Report on Human Settlements 2003, The Challenge of Slums*, Earthscan, London; Part IV: ‘Summary of City Case Studies’, pp195-228.

20 Sahmakum Teang Tnaut (2012). *Facts & Figures #21: Resettling Phnom Penh: 54 - And Counting?*

21 Sahmakum Teang Tnaut (2011). *Facts & Figures #19: Displaced Families: Phnom Penh 1990-2011*.

22 Amnesty International (2008) *Rights Razed: Forced Evictions in Cambodia* (p.7).

23 World Bank Asia and Pacific Region (2006) *Cambodia: Halving Poverty by 2015? Cambodia Poverty Assessment* (p.48).

24 This is not an issue that is confined only to Phnom Penh; in 2012, the local NGO Licadho stated that in the 12 provinces where they have offices, they have recorded 654 land disputes, involving the land of 85,000 families, or 400,000 people. Adhoc, another local human rights organization, put forward even higher figures, stating that since 2000 they have recorded disputes involving 150,000 families nationwide, which involve about 700,000 people.

25 World Bank (2002) *Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 Million (US\$24.3 Million Equivalent) to The Kingdom Of Cambodia for a Land Management and Administration Project* 29 January 2002.

26 Ministry of Land Management, Urban Planning, and Construction (2011) *Land Administration Sub-sector Programme Newsletter, Land is Life, November 2011* (p.7).

27 Sahmakum Teang Tnaut (2011). *Facts & Figures #19: Displaced Families: Phnom Penh 1990-2011*.

28 Rithysen, C. (2009) *Letter 372 PPMO/PHN from the Director of the Phnom Penh Department of LMUPC and director of Project Management of Phnom Penh to the chair of the administrative committee of Phnom Penh: Request for permission to exclude the following areas from systematic titling October 6, 2009 (unofficial translation)*.

29 World Bank Enhanced Review Mission (2009) *Cambodia Land Management and Administration Project - Enhanced Review Report, 13 July 2009* (p.8).

Figure 5: Sanitation remains an issue in many poor settlements in the city



there are areas where communities have been excluded from the systematic registration process without consultation and in the absence of clear and well demonstrated legal justifications. In the context of renewed donor commitments related to the '[a]voidance of (temporary) exclusions from the registration process',³⁰ one concern is that such areas may eventually be subject to Circular 03, despite never having had their legal status fully adjudicated through the SLR process.

Lack of comprehensive state land management in Phnom Penh also makes the process of land registration more complex, as areas bordering state land or overlapping state land cannot be adjudicated until the state land is clearly identified. As people are occupying land on or around properties belonging to the various ministries, as well as alongside infrastructure such as roads and canals, and on the banks of or even over lakes, state land mapping needs to be conducted prior to or alongside registration efforts. However, this is generally not the case. As stated in the World Bank report referenced above:

*'The state land identification (public and private) should be determined before or rather simultaneously to the individual plot titling. This has not happened to date in urban areas, which is why provincial/municipal authorities are trying to determine what would be state land, and asking it to be excised from the systematic titling process. State land (public and private) identification and mapping, must not be done through unilateral excision, it must be done in a separate, transparent and participatory process as mandated by relevant legal and regulatory provisions.'*³¹

This is also a key concern related to Circular 03 implementation in Phnom Penh, and great care must be taken to ensure that people are not deemed to be illegally settled on state land in the absence of an adequate process of state land identification and mapping. However, before discussing the Circular in more detail a review of the existing legal framework is needed.

30 Cambodia Rehabilitation and Development Board, Council of Development of Cambodia (2011), *Summary Record of the Negotiations on Development Cooperation between the Government of the Federal Republic of Germany and the Royal Government of Cambodia held in Bonn on 13 and 14 December 2011*.

31 World Bank Enhanced Review Mission (2009) *Cambodia Land Management and Administration Project - Enhanced Review Report*, 13 July 2009 (p.8).

2.2 THE LEGAL FRAMEWORK

OWNERS, LEGAL POSSESSORS, AND ILLEGAL SETTLERS

The complex situation currently facing Cambodia's land sector is in large part the result of its tumultuous history, as already discussed. The move from total state ownership of land to privatised and individually registered holdings has been long and complex. Across the country there are people who hold 'hard' titles, or official land ownership certificates issued by the cadastral authorities operating under the Ministry of Agriculture in the 1990s, or under the MLMUPC after 2002. However, many people have not yet been able to obtain such documentation, either because their land has not yet been subject to, or has been excluded from, the SLR process, or because they have not been able to afford to apply for a sporadic title under the new system. These people rely on what is often termed as 'soft title', which includes land receipts,³² officially witnessed land sale contracts, and other documents that show at least tacit approval of the occupation of their land.

Cambodia's reformed land administration system is in the process of phasing out this plurality of land documentation, and working towards titling private land plots across the entire country. However, until this is achieved, it is important to understand the different legal status of the various groups of occupants. In order to understand how Circular 03 fits in with the existing legal framework related to land, it is important to first clarify how ownership and legal possession are defined under Cambodian law, and who exactly may be regarded as an 'illegal settler'. It is also crucial to have a firm understanding of the definition of 'state land', which is discussed in the following section.

OWNERSHIP

Ownership is the exclusive right to control, use and dispose of land and anything connected to that land.³³ The Cambodian Constitution recognises that all persons have the right to private ownership. Ownership should be protected by law, and the right to confiscate private property from any person may only be exercised when in the public interest and only after the payment of fair and just compensation.³⁴ This is echoed in the Land Law of 2001.³⁵

Ownership of land can only be confirmed after survey, adjudication and registration by the cadastral authorities, working under the MLMUPC. After receiving a land title through the full legal process, the owner is officially recognised as the true owner of the land, and the information contained on the Land Register is definitive. The only way to definitively prove ownership is by producing an official land title. This is the strongest protection that anyone may have for their land, and privately owned property may only be confiscated if there is a legitimate public interest in doing so. This must follow the provisions of the Constitution and Land Law, as well as the process set out in the Law on Expropriation.³⁶

In summary, anyone who has received a land title through the MLMUPC's land registration system is an owner. As such they may not be dispossessed unless this is in the public interest, and only after payment of fair and just compensation.

32 Following the land reforms of the late 1980s and early 1990s, citizens were encouraged to submit applications for ownership certificates to the Ministry of Agriculture which at the time had the responsibility of managing agricultural land use throughout the country. However, the Ministry was overwhelmed by applications and the majority were never processed. Some households still hold receipts that they received when they first applied for these certificates.

33 RGC (2001) *Land Law, Article 85*.

34 RGC (2004) *Constitution of the Kingdom of Cambodia, Article 44*.

35 RGC (2001) *Land Law, Article 5*.

36 The *Law on Expropriation* was passed in 2010, but at the time of writing was still not being implemented as it requires the drafting and adoption of a number of complementary sub-decrees to set out key procedures.

LEGAL POSSESSION

Although significant progress has been made in issuing titles across 16 of Cambodia's 24 provinces, there are still many millions of people who have not yet received land titles, and are therefore not yet legally recognised as the owners of their land. However, that is not to say they are without rights and protections, and a huge number of those without official land titles are what is known as 'legal possessors'. According to the Land Law (2001), any person who was in possession of their land prior to the passing of the law (in August 2001) and satisfying a further five criteria³⁷ is entitled to apply for a land title.³⁸ If someone commenced occupation of their land after this date, but can prove that they purchased the land from the original legal possessor, their claim is also considered legitimate.³⁹

The status of legal possessor provides similar rights and protections to that of an owner. While waiting for possession to be converted into ownership, as long as their possession is in compliance with the Land Law, possessors have the right to use, occupy, transfer, and exclude others from their land.⁴⁰ However, legal possession does not constitute an indisputable right. In cases where there is a dispute, possessors (or competing possessors) must prove that their possession is legitimate.⁴¹ For the many hundreds of thousands of Cambodians who have not yet received land titles, their status as legal possessor is the basis for their claim for land title. The law prohibits any action that interferes with the peaceful possession of land in areas where ownership claims have yet to be adjudicated. This, in theory at least, provides valuable protection for the land rights of those who are yet to receive land titles, but meet the requirements of legal possession.

If a possessor applies for land title, or if the area where they live is subject to systematic registration, it is each individual possessor's responsibility to provide evidence to prove that their possession is legal and therefore can legitimately be recognised as full ownership. In order to prove that they meet the requirements of legal possession, landholders must submit documents that prove how long they have occupied their land, and adjudication officers will interview neighbours and local officials to ensure that there is no conflict over the possession of that land and that there is no dispute over its boundaries.

As mentioned above, the requirements for legal possession are clearly set out in the Land Law. However, the law also sets out a number of restrictions. Importantly, the law brought about an end to new possession claims by making it illegal to initiate any new possession after the passing of the law.⁴² This does not have the effect of criminalising those already settled at the time the law was passed, but makes clear that any possession that commenced or commences after 2001 is not legal.⁴³ Additionally, and of crucial importance to this report, the Land Law makes clear that no possession on state public land is legal, no matter when it commenced.⁴⁴

In summary, anyone who does not have a land title for their land, but who commenced possession of that land prior to the passing of the Land Law 2001 (or purchased the land from someone who did so) may be a legal possessor. To be legal, this possession must meet a number of criteria as set out in the Land Law, and the land must not be state public property. Legal possessors have similar rights to owners, including the right to control, use, and transfer their land, and have the right to apply for full land titles.

37 To be legal, possession must be: unambiguous, non-violent, notorious to the public, continuous and in good faith (RGC (2001) *Land Law*, Article 31).

38 RGC (2001) *Land Law*, Articles 30 & 31.

39 RGC (2001) *Land Law*, Article 30.

40 RGC (2001) *Land Law*, Article 39.

41 RGC (2001) *Land Law*, Article 30.

42 RGC (2001) *Land Law*, Article 29.

43 RGC (2001) *Land Law*, Articles 18 & 34. See also: RGC (2001) NOT N°43, *Notification on Cessation of Acquisitive Possession of Immovable Property*, 6 September 2001.

44 RGC (2001) *Land Law*, Articles 16 & 18.

ILLEGAL SETTLERS

Those who do not have rights as owners or possessors of land may in fact be illegal settlers. In many cases, illegal settlers may not be aware of their status as such. They may have resided on their land and in their homes in full knowledge of local authorities, and may even be in possession of land sale contracts that were witnessed by local village chiefs or commune officials. However, as discussed above, if they do not have land titles, and if their possession does not meet the requirements of legal possession as set out in the Land Law, their occupancy is likely to be viewed as illegal. This may be because their possession commenced after the Land Law was passed, or they may be residing on land that is regarded as state public property. As mentioned earlier in the report, due to the lack of comprehensive and transparent state land mapping, this can often be difficult to assess.

Unfortunately, many people have lived for years in such circumstances, unaware of their status under the law, and under the assumption that the tacit approval of the local authorities meant that their occupation was legal. In other cases, such as the aforementioned case of Boeung Kak lake, concerns have been raised that people have been labelled as ‘illegal settlers’ in an opportunistic manner, as and when development priorities dictate. As shown by the cases of Boeung Kak lake, Koh Pich island, and Group 78, and no doubt multiple smaller and unreported instances, people who may well have had claims as legal possessors were never given the opportunity to have such claims assessed, and have had their homes and lands taken on the grounds that they settled there illegally.

Illegal settlers may well be able to benefit from the Circular 03 process and the ‘resolutions’ it sets out. However, the situation described above also provides support for why the implementation of Circular 03 should proceed cautiously, and stresses the need for settlements, and individual households within them, to be properly assessed according to the legal process already set out in the Land Law and subsequent legal framework before it is decided that they be subject to the resolutions of Circular 03.

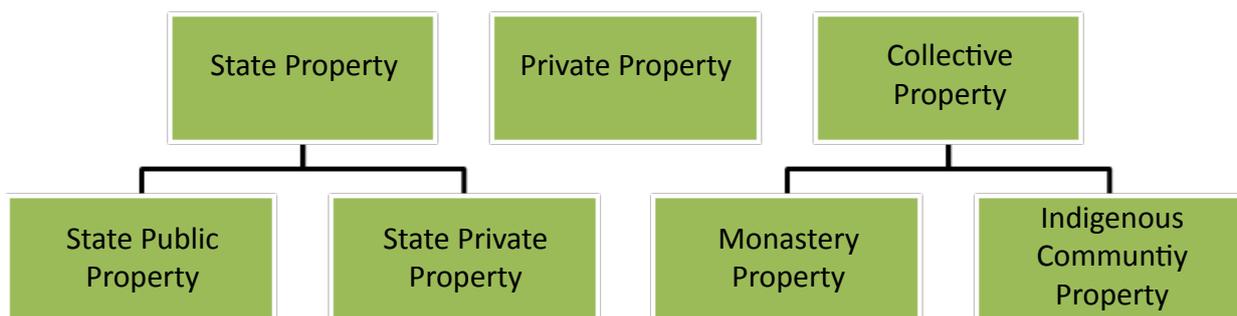
In summary, those people who do not have land titles, and do not meet the conditions of legal possession as defined in the Land Law and/or are living on state public land are most likely to be illegal settlers. These are the people who should in theory be directly affected by the application of Circular 03, which if implemented appropriately could be of significant benefit to them.

WHAT IS ‘STATE LAND’?

As Circular 03 applies only to those who are illegally settled on state public land, it is important to have a clear understanding of what state land is and how it is defined under Cambodian law. The 2001 Land Law sets out the main classifications of land, and provisions for state land management are further elaborated by sub-decree and other legal instruments.

The Land Law 2001 sets out three main classifications of land: state, private, and collective. These are outline in Figure 6.

Figure 6: State Land



For the purposes of this report, understanding of the definitions of state *public* land and state *private* land is important. As the name suggests, state public land is land held by the state that has a general public use, benefit or service. This includes roads, public gardens, schools, hospitals and administrative buildings. It also includes land that is of natural origin such as rivers, lakes and seashores, and areas of archaeological or heritage value (see Annex 1 for a full list of state public properties). State public property cannot be owned or possessed by anyone except the state,⁴⁵ and any encroachment on state public land is in fact a criminal offence punishable by a fine or time in jail.⁴⁶

State private land is all the land that is neither state public land, nor legally privately or collectively owned or possessed under the Land Law of 2001.⁴⁷ Basically, the category of state private land is a 'catch all' for those lands not owned or legally possessed by anyone, and which do not come under the list of state public properties.⁴⁸ Unlike state public property, state private property may be subject to sale, exchange, distribution or transfer of rights to private individuals or companies, provided this is in accordance with the law.⁴⁹

In 2006, a decision was issued by the MLMUPC that set criteria for identifying all types of state land.⁵⁰ This clarified a number of important questions, such as: what distance from the road should be regarded as 'roadside', where do riverbanks extend to, and what distance from the railway is classed as 'right of way'. These criteria are of vital importance to those people living on or close to the borders of state land, and could make the difference between whether they are classed as legal possessors or illegal settlers. As already mentioned, Circular 03 applies only to those illegally settled on state public land. This would include:

- Those who commenced possession of state *private* land after the passing of the 2001 Land Law, or whose possession does not meet the requirements of legal possession; and
- Those who are settled on state *public* land at any time.

The Land Law is very clear that anyone who commenced possession of state private land after the passing of the Land Law, and anyone who is in possession of state public land (no matter when possession commenced), has no legal claim to that land.⁵¹ Anyone in this situation has no right to convert their possession into ownership, and cannot claim compensation for any subsequent loss of this land.⁵² This raises an interesting question as to how the Cambodian Government can deal with those illegally settled on state land. Circular 03 provides a potentially promising mechanism for dealing with this problem, the details of which are the focus of Section 3 of this report.

In summary, state land is divided into state public and state private land. State private land may be subject to legal possession, and may also be converted to private land provided this follows the legal process. State public land cannot be legally possessed or privately transferred, and cannot be subject to private acquisition through possession.

45 'An infringement against public property shall be fined from five million (5,000,000) Riel to fifty million (50,000,000) Riel and/or imprisoned from one (1) to five years.' RGC (2001) *Land Law, Articles 16 & 18.*

46 RGC (2001) *Land Law, Article 259.*

47 RGC(2005) N°118 ANK/BK, *Sub-decree on State Land Management, Article 5.*

48 RGC (2001) *Land Law, Article 14.*

49 RGC (2001) *Land Law, Article 17.*

50 MLMUPC (2006) *Decision N°52 on Decision to Put the Text On Criteria for State Land Classification as an Annex of Prakas N°42, Dated 10 March 2006 On State Land Identification, Mapping and Classification, 25 December 2006.*

51 RGC (2001) *Land Law, Article 18.*

52 RGC (2001) *Land Law, Article 19.*

STATE LAND MANAGEMENT

Unfortunately, to date there has been no coordinated identification, mapping and registration of state land. In a number of cases, occupants have been issued eviction notices or denied title based on the claim that they are illegally settled on state land, often in the absence of any full legal assessment of this claim. As there is currently no accessible database on state land, such claims are effectively unverifiable.

The foundations of the legal framework for state land management are set out in the 2001 Land Law and built upon by Sub-decree N°118 on State Land Management, which was passed in 2005.⁵³ The sub-decree states that state land identification and mapping is a ‘coordinated and transparent process’ which is to be conducted by the District/Khan State Land Working Group under the leadership of the Provincial/Municipal State Land Management Committee.⁵⁴ The basic procedure set out in the sub-decree was further elaborated in MLMUPC Prakas N°42 issued in 2006.⁵⁵ The process is detailed and specifies the roles and responsibilities of the relevant actors. Importantly, for people living in the area being mapped, it contains numerous provisions to ensure transparency and public involvement.

As can be seen in the introductory notes to this report, in the Cambodian legal hierarchy, a circular sits below both a prakas and sub-decree, and can therefore not amend the legal process for state land identification and mapping, and likewise cannot be used to circumnavigate it. Circular 03 must therefore be implemented in a way that follows these pre-existing and higher legal instruments. Therefore, before anyone is made subject to the ‘resolutions’ set out in the Circular, the legal status of the land they reside on must have been subject to a robust assessment, following the process set out in the Circular but also in Sub-decree N°118 and Prakas N°42.

Sub-decree N°118 sets out the principles for identification, mapping, classification and registration of state land, detailing both the process and the roles and responsibilities of the relevant institutions. The process of state land identification is conducted by the municipal/provincial State Land Working Groups under the direction of the municipal/provincial State Land Management Committees. The process should involve cooperation with any relevant ministries or state institutions whose mandate or interests are affected by the state land identification activities, and all state land identification and mapping must be conducted with the technical guidance of the MLMUPC. Identification and mapping documents should be posted in the affected area for a 30 day public comment period, and any comments should be passed on to the State Land Management Committee in a summary report.⁵⁶ This identification process can then be used as a basis for the land to be registered as state public or state private land according to the systematic or sporadic registration process.⁵⁷ If there are still competing claims to the land after land classification is conducted or if there is inadequate information about the status of the land, Sub-decree N°118 provides an additional procedure for classifying the land, again including an opportunity for public comment.⁵⁸

MLMUPC Prakas N°42 adds detail to the above process and includes provisions for notifying relevant ministries and state institutions as well as affected people before state land identification commences.⁵⁹ It also details the process of assigning field teams, conducting on-site work, and identifying the different claims – both private and state – to the land in question.⁶⁰ The prakas also details the process of public participation in the state land identification, including public meetings and receiving public comments.⁶¹ The prakas discusses how this information should subsequently be reported to the State Land Management

53 RGC (2005) N°118 ANK/BK, *Sub-decree on State Land Management*.

54 RGC (2005) N°118 ANK/BK, *Sub-decree on State Land Management, Article 6*.

55 MLMUPC (2006) N°42 DNS/BK, *Prakas on Identification, Mapping and Classification of State Land*.

56 RGC (2005) N°118 ANK/BK, *Sub-decree on State Land Management, Chapter 2*.

57 RGC (2005) N°118 ANK/BK, *Sub-decree on State Land Management, Chapter 3*.

58 RGC (2005) N°118 ANK/BK, *Sub-decree on State Land Management, Chapter 4*.

59 MLMUPC (2006) N°42 DNS/BK, *Prakas on Identification, Mapping and Classification of State Land, Articles 7 & 8*.

60 MLMUPC (2006) N°42 DNS/BK, *Prakas on Identification, Mapping and Classification of State Land Articles 9-14*.

61 MLMUPC (2006) N°42 DNS/BK, *Prakas on Identification, Mapping and Classification of State Land Articles 16-19*.

Figure 7: Many urban poor households live under constant fear of eviction



Committee, investigating conflicting claims and reaching consensus.⁶² These provisions all have significance to the implementation of the Circular 03 process which follows similar steps. As a circular holds a lower position in the legal hierarchy its implementation must follow the prakas and sub-decree.

In summary, a legal framework already exists for the identification, mapping, classification and registration of state land in Cambodia. A parcel can only be declared state land following the procedures set out in Sub-decree N°118 and supplemented by Prakas N°42. Subsequently the land can be added to the Land Register and state land database. State land has to date been identified and registered for the most part on a sporadic basis, and no coordinated state land registration has taken place. Due to the lack of an accessible database on state land, it is difficult to verify which areas have so far been officially demarcated as state land.

62 MLMUPC (2006) N°42 DNS/BK, Prakas on Identification, Mapping and Classification of State Land Articles 22-24.

2.3 THE URBAN POOR AHEAD OF CIRCULAR 03

As discussed earlier, the land registration system has run into some difficulties, and although a large number of titles have been issued in rural areas, urban figures are much lower. There are also multiple cases of exclusion from the titling system, and in many of these cases the affected people have been urban poor settlements. In some cases these urban poor settlements have been subject to evictions in the last decade, despite many having strong claims to legal possession.

Cambodia's existing legal framework clearly states that settlements, or individual households within them, on state public land, and possession that commenced after the Land Law was passed are both illegal and cannot be subject to land titling. However, at the same time the Cambodian Government has obligations to protect the rights of all citizens to adequate housing, whether their tenure status is legal or illegal. Despite Asian Development Bank (ADB)-supported efforts to develop a Resettlement Policy through a sub-decree,⁶³ Cambodia still lacks a law for the conditions and regulations for conducting resettlement, which means that the quality of resettlement differs greatly from case to case. The 2010 Law on Expropriation includes basic provisions for the conditions of expropriating legally held land when it is in the public interest to do so, but this law does not apply to illegal settlers. While there have been suggestions over the years that schemes would be launched to either upgrade or adequately resettle residents of informal settlements, such as the 2003 announcement by the Prime Minister that the government would upgrade 100 slums per year for the following five years,⁶⁴ these schemes have failed to come to fruition. As mentioned above, drafts of the National Housing Policy also included mechanisms for increasing tenure security of informal settlers through various means. However, this policy has to date not been finalised.

Circular 03 thus enters the picture in a context where urban poor settlements have continued to exist and even grow in the absence of a clear policy to deal with them. For some people living in these settlements, the Circular may provide options that can eventually lead to more secure tenure. However, in addition to those whose land occupation may be illegal, there are those who may have claims as legal possessors but cannot access the land registration system due to the reasons outlined above. Ensuring that these people are not automatically labelled as informal settlers for the simple fact that they have been overlooked by the registration system will be a key challenge for Circular implementation.

63 Asian Development Bank (2004) *TAR:CAM 37535 Technical Assistance to the Kingdom of Cambodia for Enhancing the Resettlement Legal Framework and Institutional Capacity*.

64 UN-HABITAT (2003) *Cambodian Prime Minister launches slum upgrading campaign, 1 July 2003*.

3.1 BACKGROUND

In many respects, Cambodia's legal framework for land management and administration is fairly well developed, with the 2001 Land Law providing a strong foundation which has been supplemented by various additional sub-decrees and regulations. Frameworks for land registration, state land management, land concessions, registering indigenous land, and so on, have all been adopted over the last decade. Additionally, the Law on Expropriation has been passed, and sets out the conditions and procedures under which legal owners and possessors may be legally deprived of their land if it is required for a public interest project. However, prior to the Circular being adopted there was no legal framework that covered people whose occupation was illegal.

In recent years the number of evictions in Phnom Penh has increased, and has frequently led to negative media coverage, criticism from the international community, and conflict between the Municipality and local communities. 2009 was a particularly bad year. In January, 152 families from Dey Krahom were violently evicted from their city-centre homes, followed by 190 families evicted from nearby Reak Reay, and another 146 families from Group 78, also in the vicinity. Eviction of some 4,200 families from Boeung Kak lake was also ongoing, and by the end of the year the World Bank's flagship project in the land sector was terminated early, as the Boeung Kak lake residents' complained to the Bank's Inspection Panel alleging safeguards violations under LMAP implementation.

Perhaps in response to these issues, and in order to remedy the gap in the legal framework, it was announced that a Circular would be adopted in order to provide 'resolutions' for 'temporary settlements'. According to a leaked cable from the US Embassy in Phnom Penh, the Circular was drafted by the MLMUPC 'in response to a Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) request for a standard operating procedure for resettlement of communities in eviction cases, in an attempt to avoid the types of high-profile, sometimes violent evictions seen in Cambodia in the past.'⁶⁵

While it is welcome that the government together with GIZ⁶⁶ has taken steps to fill the gap in the legal framework pertaining to illegal settlers, some have raised concerns that a Circular is not the most appropriate instrument to do this. Circulars are generally issued by a ministry or government authority in order to clarify a point of law or give instructions. As such, a circular does not have force of law, and is relatively low in the legal hierarchy. They can be made redundant through the introduction of new legal documents, and the ADB is currently providing technical assistance to develop a sub-decree on informal settlements which will 'set out clearly rights and responsibilities of those affected as well as those responsible for land acquisition and at the same time provide a legal basis for provision of assistance to informal settlers.'⁶⁷ If adopted, the sub-decree could render the Circular obsolete.

65 US Embassy Phnom Penh (2009) *Draft resettlement regulations raise NGO and donor concerns*.

66 As noted previously, GTZ merged with DED and InWEnt to form GIZ in 2010.

67 Asian Development Bank (2011) *TA 7566-REG: Strengthening and Use of Country Safeguard Systems CAM: Preparation of Draft Sub Decree on Informal Settlers August 2011*.

Nevertheless, the Circular quickly became a cornerstone for German development cooperation in the land sector. During negotiations between the Royal Government of Cambodia (RGC) and the German government in October 2009, approval of the Circular came to form one of five milestones for continued German involvement in the land sector. According to milestone number two, '[a]fter a public consultation process by Dec 2009 the Circular on Resolution for Temporary Settlements in Cities, Urban and Rural Areas will be approved by April 2010. Implementation will be done by the appropriate inter-ministerial structure and will include the distinguishing between legal possessors and illegal squatters. A preliminary list of all Phnom Penh communities occupying state land will be prepared.'⁶⁸

The Circular was drafted by the MLMUPC and first released by the Ministry on December 4, 2009. Stakeholders were invited to give comments by December 18, when an invitation-only full-day consultation workshop was held by the Ministry at Sunway Hotel in the capital. The consultation comprised of a presentation of the Circular, followed by group discussions, during which civil society actors present raised several key issues, including: opposition to the labelling of poor communities as illegal without due process; concerns regarding lack of harmony between the Circular and the existing legal framework and processes; appropriateness of a Circular as the legal tool to address the issue of illegal settlers; concerns regarding future land use guiding land classification; and concerns regarding the vagueness of proposed solutions. Prior to the consultation, seven civil society organisations had also sent a letter⁶⁹ to the MLMUPC outlining their concerns, including that the consultation process was too short and limited.

Development partners weighed in on the drafting process through the Technical Working Group on Land (TWG-L). Concerns raised amongst development partners echoed those of civil society, including the *ex ante* labelling of poor communities as illegal, as well as lack of harmony with the existing legal framework, particularly the lack of an explicit mention that determination of the legal status of settlements would take place in accordance with the Land Law. However, as a leaked cable from the US Embassy reveals, development partners involved in the Cambodian land sector were unable to develop a joint response:

*'GTZ, the WB [World Bank], and the UN Office of the High Commissioner for Human Rights (UNOHCHR) attempted to draft a joint donor submission to suggest revisions covering major concerns. However, they failed to reach a compromise on the tone of the statement [...] GTZ wanted a more neutral statement of concern, while the WB/UNOHCHR [...] preferred a stronger statement reflecting donor concerns raised by the TWG-Land. A UNOHCHR staffer speculated [...] that GTZ wanted to keep the donor statement more conservative in order to avoid antagonizing the MLMUPC; GTZ feared facing the same issues encountered by the WB when it began to press the RGC [Royal Government of Cambodia] on LMAP's limitations.'*⁷⁰

The position of GTZ may also be explained by the fact that approval and implementation of the Circular formed a milestone for continued German engagement in the Cambodian land sector. As such, together with the RGC, it had an inherent need to see the Circular approved and implemented in accordance with the agreed milestone.

Following the consultation workshop on December 18, civil society actors and development partners continued providing input and comments on various drafts of the Circular. Although this resulted in some improvements to the Circular, notably the removal of a reference to 569 supposedly illegal settlements in the city, the majority of concerns raised were not taken on board.

The Circular was formally adopted on May 31, 2010. Since then, GIZ-supported implementation has begun in Battambang where the agency has a previous relationship with the Municipality, while it seems the MPP has taken independent steps towards implementation in Phnom Penh. Despite pressure from Germany

68 Cambodia Rehabilitation Board, Council of Development of Cambodia. (2009) *Summary Record on Development Cooperation between the Royal Government of Cambodia and the Government of the Federal Republic of Germany Phnom Penh 15-16 October 2009*.

69 BABSEA, COHRE, CLEC et.al. (2009) *NGO Comments on Draft Circular on 'Settlement of Illegal Temporary Buildings in Cities and Urban Areas'*

70 US Embassy Phnom Penh (2009) *Draft resettlement regulations raise NGO and donor concerns*.



Figure 8: With secure tenure, many poor communities are often willing to invest in infrastructural upgrades

for GIZ to be involved in C03 implementation in the capital, the agency has yet to become so, partly because of complications arising from the fact that implementation is done at the sub-national level, i.e. through municipal and provincial authorities, while GIZ's natural partner in the Cambodian land sector is the MLMUPC.

In December 2011, Germany re-stated its commitment to the Circular, by including 'avoidance of (temporary) exclusions from the registration process' as a medium-term milestone for the period 2012-2015.⁷¹ A proposal was subsequently developed by the MLMUPC under the LASSP for '[s]peeding up systematic land registration process by solving exclusion area and using circular N°02 & 03'⁷² While the MPP apparently remains averse to working with GIZ, the agency is in negotiations with civil society actors regarding community development and training in the capital outside the immediate framework of the Circular. However, an opportunity for increased development partner involvement in C03 implementation in Phnom Penh could be opened up in the near future; in June 2012 UN-Habitat proposed to re-establish its office at the MPP and become involved in C03 implementation, among other activities.

71 Cambodia Rehabilitation and Development Board, Council of Development of Cambodia (2011) *Summary Record of the Negotiations on Development Cooperation between the Government of the Federal Republic of Germany and the Royal Government of Cambodia held in Bonn on 13 and 14 December 2011*.

72 MLMUPC (2012) *Strategy to Speed Up land Registration in Cambodia (unofficial translation)*.

3.2 ANALYSIS OF THE CIRCULAR'S PROVISIONS AND APPENDICES

The Circular is a five-page document consisting of a short introduction and seven articles. Each article outlines steps to be taken 'to provide resolution for only temporary settlements on state land which has been illegally occupied'. On September 27, 2010, an MLMUPC Decision was issued which added 13 appendices to the Circular;⁷³ these are templates of official documentation required in order to complete all steps in the Circular. As noted above, the Circular is not a law, and is located relatively low in the legal hierarchy. Stakeholders involved in on-going implementation efforts hence tend to call it an 'administrative tool', stressing its flexible, non-prescriptive nature.

The Circular is implemented at the sub-national level with Municipal or Provincial authorities, and their State Land Management Committees, playing a key role in accordance with the Organic Law⁷⁴. Lower level authorities are also expected to take part through the State Land Working Groups (SLWGs). Given that the Organic Law is still in the process of implementation, all State Land Management Committees (SLMCs) and Working Groups may, as yet, not have been established and/or become operational. The Circular also stipulates community and civil society involvement in C03 implementation, however, steps for meaningful consultation and involvement are not explicitly outlined.

The below provides a detailed analysis of each step of the Circular.

STEP 1: DATA COLLECTION ON THE NUMBER OF TEMPORARY SETTLEMENTS SITES⁷⁵

The first article of the Circular covers collection of data related to the number of temporary settlements in each urban area. It states that the Chair of the Municipal and Provincial SLMC should urge the District/Khan/Municipal SLWG to appoint field teams at the Sangkat/Commune level to collect data on the number of sites of temporary settlements within their territory. The article requires that this be done with the participation of local communities and civil society organisations. This data collection should serve as the basis for resolutions of individual cases.

ANALYSIS

Article 1 refers to both the SLMCs and the SLWGs, which were established by Sub-decree N°118 on State Land Management. This is a positive sign and indicates that the RGC intends to implement the Circular in accordance with the sub-decree. The act of documenting and conducting data collection on all 'temporary settlements' in itself is a positive move, as to date there is inadequate data available regarding such settlements. The process of identifying areas has the potential to create a solid foundation for the future implementation of the Circular – provided it is conducted in an open and transparent way, and that, as specified by the Circular, the process has full participation of affected communities and civil society.

Community leaders, committee members and elders, will have important historical information on the settlement of the area, which should be utilised in assessing the legal status of households in the identified settlement. Likewise, civil society groups who have a working relationship with a given affected community may have information that is useful for the data collection process. Additionally, civil society groups can act as independent observers at all stages of the Circular implementation to ensure that the process is conducted appropriately. An environment of cooperation with both local people and NGOs can help to ensure that the Circular is implemented properly and in accordance with the law, and also in a smooth and efficient manner.

73 MLMUPC (2010) Decision N°49, Putting in Use of Template Appendices for Implementation of the Circular on Resolution of Temporary Settlements on Land which has been Illegally Occupied in the Capital, Municipal, and Urban Areas, 27 September 2010.

74 The Organic Law refers to the Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans which promotes decentralization and deconcentration efforts aimed at devolving power from the national level to sub-national levels.

75 RGC (2010) Circular N°03 on Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas, Article 1.

At this stage, the fact that a community has been identified in the preliminary data collection as a 'temporary settlement', should not affect its legal status, as full identification, mapping and classification is not conducted until stage 2 of the process.

STEP 2: IDENTIFICATION, MAPPING AND CLASSIFICATION OF LAND OF TEMPORARY SETTLEMENTS⁷⁶

Following on from the initial data collection, the SLWG, together with local community representatives and civil society groups, should hold a meeting to discuss and review the accuracy of the data for each site identified as a 'temporary settlement'. This data should then be incorporated into a large-scale map of the Commune/Sangkat. Looking at each specific site, the SLWG and representatives of the local community and civil society shall identify each site based on the physical features of the land. It should be noted that at this stage the land is not being classified, it is simply being identified according to its physical features and use. For this process, the Circular provides a list of land types:

- Land used as: public parks, public space, state private land, privately-owned or company owned land, and premises of Buddhist monasteries (pagoda), etc;
- Land for which land-use plans already exist for: public parks, road networks, sewage or canal systems, industrial zones, commercial zones, housing zones, and tourist zones, etc; and
- Locations that are potentially dangerous or harmful for residents because they are: near dumping grounds, near sewage canals, on the sidewalk, in the right of way (ROW), by railways, on flood-control dykes, river banks, streams, creeks, and roof terraces, etc.

The maps of all settlements should be marked on the maps in different colours, specifying the physical features of the land in accordance with the above list. This map and data should be acknowledged and thumb-printed by the SLWG, local community representatives, and civil society, and after being finalised the maps should be publicly disseminated.

Following on from this, the SLWG should convene a meeting to reach agreement on the classification of the land in question as: state public land, state private land, or privately-owned land. This should be written up into a report, along with maps, supporting documents, 'opinions of consent or non-consent', as well as comments from the meeting. The Capital/Provincial SLMC must then review the report's findings. The Circular goes on to state that after the land in question is identified, mapped and classified 'with consent by all or approval' by the Capital/Provincial SLMC, the land should be entered into the Land Register.

Annex 5 of Decision N°49 contains a sample form for the SLWG report on the identification and mapping meeting. The form states that the SLWG deliberations are based on Article 4 of *Sub-decree N°118 on State Land Management 'and/or' Prakas N°42 on Identification, Mapping and Classification of State Land*, 'or' the physical features of the land. The sample report also indicates that in identifying state properties, the SLWG will use the annex to *Prakas N°42* as attached by the MLMUPC Decision of 2006 (this annex specifies how various state properties should be identified). The sample report form divides the identified lands into two tables, one for all areas for which state land identification and institutional responsibility is agreed upon by all members of the SLWG, and one for those areas that do not have agreement. This document will be made public for 30 days during which comments should be received. The public comments will be compiled and then displayed for a further three days.⁷⁷

76 RGC (2010) *Circular N°03 on Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas*, Article 2.
77 MLMUPC (2010) *Decision N°49, Putting in Use of Template Appendices for Implementation of the Circular on Resolution of Temporary Settlements on Land which has been Illegally Occupied in the Capital, Municipal, and Urban Areas*, 27 September 2010, Appendix 5.

ANALYSIS

Step 2 of the Circular process is implemented in two stages: preparation of maps by the SLWG, and approval by the SLMC. This second step is an important process, and serves to identify in more detail the physical nature and legal status of the land. This process of land identification appears to mirror the process set out in Sub-decree N°118 and Prakas N°42, but is much less detailed.

The data gathered during step 1 should be raised at a public meeting, where it should be discussed and reviewed for accuracy. During this stage it is crucial that the full maps are disclosed and that affected people and civil society representatives are able to review the data. At this stage, it is essential that there is a mechanism for complaints to be raised regarding the identification of specific areas as state land. Without a mechanism to raise concerns and have identification decisions reviewed, the involvement of communities and civil society at this stage will be passive, resembling something more similar to information dissemination by the SLWG, rather than a genuine consultation. Without proper consultation the process risks becoming stalled, as the final land identification maps require thumb-prints from communities and civil society, who are unlikely to agree to do so if they disagree with the contents. Feedback from this meeting will also be used by the SLWG in classifying the various types of land, and should be included in its report to the SLMC. There must therefore be adequate opportunity for community members and civil society to comment.

Of particular concern during the identification stage is the second category of land types listed in Article 2, 'land for which land-use plans already exist'. Included in this list are some types of property that appear to be included in the existing definitions of state property, such as public parks, road networks, and sewage or canal systems. However, it also includes industrial, commercial, housing, and tourist zones, which are not necessarily state property. If development of these types of zones has been approved and entered into existing land-use maps, it does not necessarily follow that they were approved legally. If a given area of land does not meet the definition of state public property, and is occupied by people with documented possession rights, the development is not legal. Land-use plans in Cambodia are notoriously hard to obtain, and it is thought that many, especially in Phnom Penh, indicate that a considerable amount of land that is legally possessed has been marked for development. These land use maps are not prepared in an open and transparent manner, and should not supersede the law, especially the laws related to state land management and individual land rights. If a private company wishes to develop on the land of legal owners or possessors they must first purchase the land from the occupant at a price negotiated between the involved parties. If the project serves a public interest, as specified in the Law on Expropriation, the owners or possessors must be compensated and/or resettled in accordance with that law.

Following on from the public meeting and identification of the nature of the land located within the identified settlement, the SLWG must reach agreement on the classification of each area. As well as identifying areas of state land, this process provides an opportunity for the land to be classified as privately owned, which is important, as many urban poor settlements that are commonly referred to as 'temporary', 'illegal' or 'informal', are in fact populated by many people with legal possession rights. Also, in some settlements there may be areas that are state land, and areas that are not. At this stage those areas inhabited by legal possessors should be identified, as well as state properties.

It is crucial that the identification of state land utilises the definitions already set out in the Land Law and Sub-decree N°118. MLMUPC Decision N°52 is also an important tool and provides detailed descriptions of how to identify specific types of state land. For example, the Prakas clearly defines which parts of a lake and its surrounding area are state public property, and which are state private. Likewise it defines the right of way surrounding roads and rail tracks and defines the mechanisms that should be used to identify and demarcate such areas.

It is also important that any state land identification is conducted in full compliance with the existing legal process established by Sub-decree N°118, and elaborated in Prakas N°42. The prakas states that state land identification and mapping 'is a transparent and coordinated process conducted with joint-cooperation between the ministries, institutions, territorial authorities and local people.'⁷⁸ The prakas provides details for how relevant institutions and the public should be notified prior to any land identification, including the form for notification, where notices should be posted, and so on,⁷⁹ and also explains what must happen when a plot of land is claimed both by the state and a private individual.⁸⁰ The procedure for the SLWG meeting and public posting of maps is defined in the same prakas, as are the requirements for the content of the report that must be forwarded to the SLMC.⁸¹

The findings of the SLWG should be written up and a report sent to the SLMC, who must approve the contents of the report and the classifications given to the various areas within the settlement in question. From this stage on, any residents living on land that is classified as belonging to the state are likely to be deemed illegal settlers. For this reason, it is again crucial that the final approval of this report is done in an open and transparent manner, that community and civil society objections can be aired and addressed, and that all classification is in accordance with the law. At this point, the Circular is not clear on what the SLMC should do if it disagrees with the findings of the SLWG, or if the affected community raises objections. However, Prakas N°42 states that if there is no disagreement on the classification of the land it may be entered to the state land database. If this is not the case, especially if there is disagreement on the part of affected community members, the Prakas states that the SLMC should conduct an investigation.⁸²

Finally, the Circular states that after the SLMC approves the report of the SLWG, all lands that have been identified, mapped and classified, and over which there are no disagreements or which have been approved by the SLMC, should be registered. Provided that it is conducted in accordance with the law on state land management, this process could provide a sound basis for future state land management, and can be used for improved management of state properties in the future. It also provides an opportunity to register the private land located within the settlement area, which can be used as a way to secure the tenure of legal possessors living there. As residents of such settlements are very often poor, this provides an excellent opportunity for the RGC to make progress towards its goals of securing the tenure of the poor and disadvantage, and, potentially, future poverty reduction. However, it is crucial that if there is disagreement about the classification of a specific area, an open investigation is done into the true nature of that land and legitimate claims of ownership or possession are considered, before it is classified in accordance with existing legal provisions.

STEP 3: CENSUS ON THE NUMBER OF HOUSEHOLDS AND HOUSEHOLD MEMBERS IN TEMPORARY SETTLEMENT SITES⁸³

Based on the information gathered in the identification, mapping and classification process, the SLWG, working with community representatives and civil society, should appoint a Field Team to collect statistics for any settlements identified as being illegal. Data should be gathered on all households and family members. Each entry should specify if the occupants are owners or renters, and should be thumb-printed by a family representative. Once the census is complete, it should be posted in a public place for 30 days in the area and at the commune/sangkat office. Local residents should have the opportunity to comment during this public display.

78 MLMUPC (2006) *Prakas N°42 on State Land Identification, Mapping and Classification, Article 3.*

79 MLMUPC (2006) *Prakas N°42 on State Land Identification, Mapping and Classification, Article 8.*

80 MLMUPC (2006) *Prakas N°42 on State Land Identification, Mapping and Classification, Article 13.*

81 MLMUPC (2006) *Prakas N°42 on State Land Identification, Mapping and Classification, Articles 16, 17 & 21.*

82 MLMUPC (2006) *Prakas N°42 on State Land Identification, Mapping and Classification, Articles 22-24.*

83 RGC (2010) *Circular N°03 on Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas, Article 3.*

STEP 4: FINDING SOLUTIONS⁸⁴

After the census has been completed, the next stage of the process is for the SLWG to convene a meeting to discuss and identify options for ‘resolutions’ for each temporary settlement. The meeting should include community representatives and civil society groups. The resolution options are divided into resolutions for those who are ‘owners’ of their home structure and resolutions for those who are ‘renters’. Resolutions for ‘owners’ include:

- *Relocation* from the site in the event that on-site upgrading cannot be applied; or
- *On-site upgrading*, if the conditions are suitable; or
- *Other forms of resolutions* based on actual conditions (case by case basis).⁸⁵

The options for renters are much more limited, and they must discuss a resolution with the ‘illegal occupant’ who owns the house that they are renting. Renters have no right to request compensation from the SLWG, SLMC or territorial authorities.⁸⁶

In reaching a resolution, the Circular states that the discussion should ‘consider the public interest as a priority’, considering the interests of the majority of people within the community, the necessity of local development, and the site’s physical features. After reaching a resolution agreement, the SLWG should develop an action plan and set a timeframe for its implementation. This must be approved by the SLMC. Once the resolution is agreed upon, a notice should be made available to the public through a 30 day public display in the respective settlement site and in commune/sangkat offices.

If no agreement can be reached, the SLWG should report to the Municipal/Provincial Board of Governors with the results of the meeting, and request comment on the results, including the majority opinion, views of the local community, requests from civil society, and public comments on any proposed resolution that arises.

ANALYSIS

By step 5 of the Circular process, the settlements in question have already been identified as illegal settlements on state land, the residents have been surveyed, and so the discussion moves towards ‘resolutions’.

Based on the results of the earlier mapping, classification and census activities, the SLWG should call a public meeting to discuss resolutions for any settlement deemed to be illegal. Again, it is welcome that community representatives and civil society groups are included in this meeting, but as earlier stated, it is essential that their involvement is meaningful, and that they are able to raise concerns and objections and have them properly heard. At this stage, decisions with potentially far reaching consequences are being discussed, and it is therefore essential that the community representatives who attend the meeting have the support and confidence of the whole community.

It must also be noted that the nature of this dialogue is likely to be complex, and the possible outcomes very serious for those affected, including potential resettlement, so a single meeting is certainly inadequate. It is not clear from the Circular if this meeting is limited to a single event, but it is to be hoped that a series of meetings are held to discuss resolution options.

The resolutions specified in the Circular are lacking in terms of detail. It is promising that on-site upgrading is included in the list of resolutions, but there is no explanation of when on-site upgrading would be

84 RGC (2010) Circular N°03 on Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas, Article 4.

85 RGC (2010) Circular N°03 on Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas, Article 4.1.

86 RGC (2010) Circular N°03 on Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas, Article 4.2.

appropriate. Likewise, relocation should only occur when onsite upgrading 'cannot be applied', although it is not clear in what circumstances it cannot be applied, or who is to make such a decision. The final resolution refers to an unspecified 'resolution policy based on actual conditions', but has no reference to what policies this may be referring to. The lack of clarity in these resolution options is a considerable cause for concern, and leaves them open to arbitrary interpretation.

After a resolution has been agreed upon, the SLWG needs to develop an action plan and time frame for implementation. The development of this plan and time frame should consider the circumstances of the affected communities and should be developed in consultation with them. If it is decided that relocation is necessary, this should be done within a reasonable time frame, which gives affected people adequate time to make preparations and move.

Another issue that lacks clarity is regarding what should happen in cases where no agreement can be reached on resolution. In such cases the SLWG is instructed by the Circular to report to the Municipal/Provincial Board of Governors with the meeting results and request approval. It is not clear, however, what this approval should be based on. Neither is there any mechanism mentioned for those who do not agree with the proposed resolution.

Finally, the exclusion of renters from the resolutions is unfortunate as this may leave people living in urban-poor settlements losing their homes and struggling to find similar accommodation at an affordable rent.

STEP 5: DISCUSSION TO IDENTIFY SOLUTION POLICIES⁸⁷

Article 5 of the Circular elaborates a little on the issue of resolutions. It states that for any settlement where on-site upgrading is possible, Municipal/Provincial Governors should discuss with the relevant stakeholders the drafting of an infrastructure development plan. Procedures for developing housing must also be prepared, along with any other relevant policies for the development of local livelihoods. In cases where on-site upgrading is not possible, a specific action plan and policies must be developed in order to facilitate relocation. This must be done prior to any relocation.

The article also states that both those who are granted on-site upgrading and those who are relocated may be entitled to:

- Usufruct rights (rights to use, short of ownership) based on agreement;
- Ownership rights after the beneficiaries continuously occupy and reside on the site for at least 10 years, commencing from the date of the resolution agreed; or
- The right to rent for a specific period with a symbolic renting fee.

ANALYSIS

The case of each temporary settlement will differ from site to site, so it is important that different options are available depending on the specific circumstances of each settlement. However, this article adds little to clarify specific criteria for the implementation of the different resolutions, or the specifics of 'policies' to deal with relocated communities or those who do receive on-site upgrading.

The provision of ownership to those people who live on or use land granted through on-site upgrading or resettlement is a positive step, however, the required 10 years of continuous occupation is lengthy. Provisions may be necessary to provide tenure security for these people for the 10 year period, until they are able to acquire full ownership.

⁸⁷ RGC (2010) Circular N°03 on Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas, Article 5.

STEP 6: BASIC INFRASTRUCTURE AND PUBLIC SERVICES SUPPORT⁸⁸

The Circular states that whatever resolution is employed, in every case the provision of basic infrastructure and public services must be taken into account. Article 6 also states that any land provided must be of a suitable size, and any resolutions provided must avoid encouraging further illegal occupation. Infrastructure and services includes: road networks, water supply, sewage, and other basic services such as education, health care and employment opportunities. The Circular clearly states that all infrastructure and services should be prepared prior to on-site upgrading or resettlement.

ANALYSIS

Although brief, the contents of Article 6 are extremely welcome and reflect calls that civil society have been making for a number of years for resettlement to be conducted only after adequate work has been done to prepare adequate resettlement conditions. In ensuring that this article is complied with, comprehensive data collection and mapping will need to be conducted of communities and local services and infrastructure. The support of local organisations could prove invaluable in preparing a detailed picture of the needs of each community affected by resolutions under the Circular. However, one point that is not covered by the Circular is the location of resettlement sites. Distant resettlement sites are generally far from services, employment and infrastructure, and are therefore often unviable, with residents often leaving soon after resettlement has taken place.

STEP 7: PARTICIPATION OF STAKEHOLDERS IN DEVELOPMENT⁸⁹

In implementing agreed resolutions, the SLWG must examine and prepare sites before implementing any activities. The final article of the Circular states that all relevant stakeholders ‘shall continue supporting the people in both on-site upgrading and relocation to establish a community or continue the operation of the existing community by assisting in developing community regulations and community savings on a voluntary basis.’ The management structure, rights and responsibilities of community members, should be clearly set under the community regulations. The Circular concludes by stating that local authorities, along with development partners and civil society may contribute their efforts in the implementation by providing technical, financial, and material support in improving infrastructure, providing basic public services, and creating job opportunities.

ANALYSIS

Again, provisions that aim to improve basic infrastructure and services for those who are resettled or who receive on-site upgrading are welcome. In cases where such services are provided to recipients of on-site upgrading, such developments can potentially contribute to Cambodia’s long term goals of poverty reduction. In cases where resettlement is unavoidable, a commitment to providing adequate resettlement conditions will help the Cambodian Government to meet its obligations under international law to protect the right to adequate housing.

Providing adequate resettlement or on-site upgrading conditions will continue to be a challenge for Cambodia, and there are lessons that can be learned from other countries around the world that have been through similar stages of development. There is guidance for how resettlement should be conducted, and what provisions should be made at relocation sites. General Comments 4 and 7 of the International Covenant on Economic, Cultural and Social Rights (to which Cambodia is signatory) set out countries’ legal obligations, and the UN Basic Principles and Guidelines on Development-based Displacement and Evictions could also provide important guidance. These guidelines may also have application to on-site upgrading resolutions.

88 RGC (2010) Circular N°03 on Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas, Article 6.
89 RGC (2010) Circular N°03 on Resolution of Temporary Settlements on State Land Illegally Occupied in the Capital, Municipal and Urban Areas, Article 7

SUMMARY

A detailed analysis of the contents of Circular and its appendices shows that the Circular – despite its brevity – is a complex document with wide-ranging implications. To ensure the Circular is implemented in accordance with the existing legal frameworks and processes, as well as recognised best practice, the following specific recommendations for each of the articles can be made:

RECOMMENDATIONS	
<p>Step 1: Data collection on the number of temporary settlements sites</p>	<ul style="list-style-type: none"> • <i>The process of the initial data collection for temporary settlements must be conducted in an open and transparent way, engaging affected communities and civil society organisations.</i> • <i>Civil society organisations should not be hindered from playing a role as observers in the process, and indeed, they should be encouraged to do so.</i> • <i>The MLMUPC has considerable experience in organising and delivering community awareness meetings, which are a part of the SLR process. In areas identified for Circular implementation, similar workshops and awareness raising sessions should be conducted with affected communities, local officials and civil society. NGOs may also be engaged in the delivery of these sessions. Such meetings should be open and accessible to all stakeholders, including the illiterate, people with disabilities, the elderly, and so on.</i> • <i>It should be made explicit that settlements identified under Step 1 are not necessarily illegal ('temporary settlements'). This could be achieved by amendments to appendices 1-6 to the effect that any reference to 'temporary settlements' is removed and data collection refers only to poor settlements or settlements potentially on state land.</i>
<p>Step 2: Identification, mapping and classification of land of temporary settlements</p>	<ul style="list-style-type: none"> • <i>Ensure that community representatives in contact with SLWGs are chosen by community members and have their continued support.</i> • <i>Create a mechanism at the public meeting stage to review settlement data and raise concerns and complaints. Concerns and complaints must be reviewed in an open and transparent manner.</i> • <i>Ensure that all identification of state land is done in accordance with existing mechanisms and definitions as already set out in existing law, i.e. the 2001 Land Law, Sub-decree N°118 and Prakas N°42.</i> • <i>Clarify that settlements will not be identified as illegal simply because they lie in the path of development projects, even if they are already approved in existing land-use maps. The basis for identifying a settlement as legal or illegal must be based on existing legal process and definitions.</i> • <i>Clarify the process by which the SLMC approves the report of the SLWG, and what happens if objections are raised by the affected communities.</i> • <i>Clarify that after approval of the SLWG report, private properties will be entered into the Land Register, not only state properties.</i>
<p>Step 3: Census on the number of households and household members in temporary settlement site</p>	<ul style="list-style-type: none"> • <i>The process of the household data collection must be conducted in an open and transparent way, engaging affected communities and civil society organisations.</i> • <i>Households targeted should be made aware of the purpose of the census and its implications prior to and during the census. No household should be forced to thumb-print census documentation against their will.</i>

<p>Step 4: Resolution options</p>	<ul style="list-style-type: none"> • Clarify the process by which public meetings on resolution options are announced, and who should be invited. Mechanisms should be put in place that ensure that community members are kept informed of discussions and that resolution options are only agreed by community representatives if the option has the full support of affected community members. • Clarify that the discussion on resolution options will be conducted over a series of meetings allowing for community members to meet and discuss privately before re-convening with the SLWG to put forward their position. • The three resolution options need to be clarified, as must the circumstances in which each one can be applied. • Clarify what action should be taken if there is no agreement from the affected community as to what resolution should be applied in their case. A mechanism should be developed for communities to appeal if they feel that the resolutions proposed are inappropriate. • As the Circular is brief, and lacks detail in the above areas, its application may benefit from the preparation of a manual that sets out the process in more detail. • Clarify that onsite upgrading is the preferred option given costs associated with relocation and monetary compensation (both for the households affected and society at large).
<p>Step 5: Discussion to identify solution policies</p>	<ul style="list-style-type: none"> • Clarify in what circumstances people will be entitled to usufruct rights, ownership or the right to rent. • Clarify that during the 10 years of occupation or use required before a household can acquire ownership, households will have protection from involuntary displacement.
<p>Step 6: Basic infrastructure and public services support</p>	<ul style="list-style-type: none"> • It is essential that the Municipal/Provincial governments conduct adequate mapping of community needs and access to infrastructure and services so that prior to resolutions being implemented, the on-site upgrade zone or resettlement site meets adequate conditions. The support of local NGOs should be sought in order to develop profiles on affected communities. • Community and resettlement site assessments must be conducted in an environment of transparency, and the results made public to relevant stakeholders and civil society. • If at all possible, any employment opportunities that are generated by associated infrastructure development should be offered to people within the affected settlement. • Whenever possible, resettlement sites should be located as close as possible to the original settlement, so as not to separate households from their employment, education and community networks. • Ensure there is no retrogression in the enjoyment of human rights as a result of the implementation of whichever 'resolution' is chosen. • While Article 6 outlines some basic needs for successful resettlement, this provision in the Circular does not detract from the need for a comprehensive resettlement policy or legal framework, which should be developed to guide resettlement under the Circular and otherwise.
<p>Step 7: Participation of stakeholders in development</p>	<ul style="list-style-type: none"> • In the provision of basic infrastructure and services in on-site upgrading areas and resettlement sites, the RGC should comply with its international legal obligations, and utilise UN guidelines in the assessment and provision of basic services.

3.3 CASE STUDY: FORMALISING COMMUNITIES IN BATTAMBANG

Battambang is Cambodia's second largest city with a population of some 180,000 inhabitants.⁹⁰ Compared to the capital, Battambang is a small provincial town, with little of the pressure on land and less investment in real estate than seen in Phnom Penh. German development cooperation has been active in Battambang for a number of years, particularly in the form of support from Deutsche Entwicklungsdienst (DED)⁹¹ and the Konrad Adenauer Foundation (KAS), which focused on developing a spatial planning framework in the context of the RGC's deconcentration and decentralisation efforts.⁹² In 2009, Deutsche Entwicklungsdienst (DED) and KAS together with the Municipality of Battambang also conducted a survey of 'informal settlements'.⁹³ The encompassing survey geo-located settlements in the city's six inner communes (Sangkats), further conducting household interviews in the identified settlements.

Combined with the spatial and land use planning work, the survey of 'informal settlements' proved a useful starting point for dialogue on the formalisation of these communities. This dialogue was strengthened following the adoption of Circular 03 in May 2010, which according to Municipal authorities represented a 'green light' from the RGC to consider the formalisation of 'informal settlements'. Other stakeholders in the process have also described the adoption of the Circular as a 'catalyst' or 'trigger' for multi-stakeholder dialogue on the future of poor settlements. However, some note that given the positive political will of the Battambang Municipality on this issue, this would most likely have happened even without the Circular.

Piloting of C03 began in late 2010, with support from DED (later GIZ), and local NGOs CMDP, CEDT, Cambodian Volunteers for Society, and Samreth (later Vishnu) Law Group. Most of the local groups, although based in Phnom Penh, had already conducted community organisation and empowerment activities with poor settlements in Battambang prior to the adoption of C03.⁹⁴ Later, the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) in Cambodia made funds available for community upgrading in the context of the C03 process.

Significantly, Battambang Municipality committed itself to implementing Circular 03 with a focus on providing target communities with tenure security on-site.

To date, processes guided by Circular 03 have commenced in some nine communities. Implementation appears to have proceeded furthest in Ponleu Prek Preah Sdach community, located between a small dirt road and the outer wall of a graveyard where local NGOs involved in the project have mapped, surveyed, helped organise and provided legal advice to the community as part of C03 implementation. According to stakeholders involved in the process, the community has received a verbal commitment from the Provincial Governor that following re-adjustment of plots into a uniform size in the community, the vast majority of the current residents will receive tenure security in the form of land titles. As of October 2012, however, it is reported progress is stalled as a result of low community demand and, fundamentally, lack of final, written approval of land re-classification from the Provincial SLMC.

This stalling of the process highlights how administrative reform, in accordance with the Organic Law, is required to fully implement the Circular. Without the various SLWGs and SLMCs defined in the Circular being in place, final decisions regarding land status cannot be taken. Other challenges at the government level also impede progress. Although the Municipality is strongly behind C03 implementation, lower level

90 National Institute of Statistics (2008) *General Population Census 2008*.

91 DED merged with GTZ and InWent in 2010 to form GIZ.

92 Diepart, Jean-Christoph (2008) *Developing a Spatial Planning Framework for Sustainable Land and Natural Resources Management. A perspective from Battambang Province, Cambodia*.

93 The study labels all settlements identified as 'informal'. It is however not clear that land in each of the settlements identified has been adjudicated. As such, this section of the report will refer to the settlements identified simply as 'settlements'.

94 TWG Battambang Municipality (2010) *Informal Settlements Survey 2009*.



authorities have limited understanding of the tool and CSOs involved have hence called for increased training and mobilisation of commune officials. Cooperation upwards can also be demanding; some stakeholders have noted limited interest in dealing with the issue at the provincial level. Ultimately, successful implementation appears to at least partly hinge on the personalities of those in power. As one person involved in the project noted: 'Since the elections last June we have good commune chiefs that understand the problems.' However, problems with other key individuals for implementation were subsequently highlighted.

Implementation is at various stages of mapping, surveying, organising, and provision of legal advice in other target communities. Many of the communities targeted appear to be located along roads, and hence likely on state public land. However, some stakeholders in the process have expressed uncertainty regarding the legal status of households certain targeted communities, such as Ekapheap, located around the outer wall of a pagoda, suggesting they may in fact be legal possessors of the land, as they have occupied the land since before 2001, and it is not evident that their parcels of land meets the definition of state public property.

Another community of unclear status is Santepheap, located in old factory buildings, reportedly now owned by the Ministry of Industry, Mines, and Energy (MIME). Land-sharing with MIME has been proposed as a possible resolution,⁹⁵ however, given that many of the residents in the buildings have stated they have occupied them on and off since 1979, they may in fact be able to claim that they are legal possessors of their property. These two cases highlight the need for identification of state land in accordance with

95 Community Managed Development Partners (2012) *Mechanism for City Scale C03 Implementation in Battambang*.

existing mechanisms and definitions as already set out in existing law, i.e. the 2001 Land Law, Sub-decree N°118 and Prakas N°42, prior to implementation of C03, to ensure no households with legal possession rights are subjected to the Circular. Unfortunately, it appears this is yet to take place in Battambang.

Other challenges in implementation highlighted by stakeholders include limited community organizing and lack of leadership, lack of clarity regarding terminology used in the Circular including e.g. the lack of guidelines regarding the required accuracy of community maps, and the sheer amount of work required to complete all annexes to the Circular. The need for administrative reform and capacity-building is also an essential part of smooth implementation, something stakeholders in Battambang have learnt the hard way.

Although the implementation of the Circular 03 process has by no means been perfect in Battambang, stakeholders in the process stress that work in various target communities has increased dialogue between the communities and the authorities, and also appears to have encouraged communities to organise and plan for the future. Some also note that the flexible nature of the Circular – in particular the vague nature of the resolutions identified – allows for negotiations to find community-specific solutions, as opposed to one-size-fits all approaches.

Crucially, however, no target community has at this stage – over two years since the Circular was adopted – obtained secure tenure in the form of land titles or other rights to use the land. Some commentators hence argue that what is taking place in Battambang cannot be called C03 implementation, as clarification of right to the land and securing tenure form a fundamental part of the Circular and should precede other steps. Community members in at least two of the targeted communities have also complained that they have been advised that in order to benefit for on-site upgrading, they need to agree to re-blocking and/or re-adjustment of the community, to the effect that members have uniform plot sizes. This could be a source for community conflict, as community members who have invested more and have larger plots may resent sharing their land with neighbours who have invested less.

The Garden Area Pilot Project provides an interesting point for comparison. Initiated by Battambang Municipality in 2007 as part of the United Nations Economic and Social Commission for Asia and the Pacific's (UNESCAP) 'Housing the Urban Poor' initiative, the project aimed to upgrade and formalize around 330 households living on land supposedly reserved to be a 'garden area'. Plots for an additional few hundred families were also to be developed as part of the social land concession, which was approved by the Council of Ministers and the Municipality in February 2009.

Despite the land conversion, the project had not achieved its objectives by the end of the UNESCAP initiative in mid-2008. Subsequently, it became part of the Land Allocation for Social and Economic Development (LASED) programme 'to test to what extent the sub-decree on Social Land Concession [sic] could be applied'⁹⁶ with Habitat for Humanity as the implementing organisation and the World Bank as the funder through the Japan Social Development Fund. Five years since initiation, the project is finally seeing some progress, with at least 123 beneficiary households having received social land concession 'land certificates' for their plots. However, problems with implementation remain, particularly related to households with large existing plots in the area who refuse to move onto smaller plots, as well as individuals linked to the military attempting to claim land in the area.

A further issue is the project's current status, which since implementation of C03 started in Battambang, is now described as an SLC-C03 hybrid. As such, although the MLMUPC in 2010 announced that residents would receive land titles five years after taking possession of their plots, it now appears they will receive titles only after ten years of occupancy. The initial 'land certificates' received by households secure their tenure of the plots, but prohibit transfer of plots or use of them as collateral against loans. According to

96 TWG Battambang Municipality (2010) *Informal Settlements Survey 2009*.

Habitat for Humanity, the households will be given a new land certificate after five years, which allow plots to be used as collateral but continue to prohibit transfer. As such, while a degree of tenure security has been achieved for the beneficiary households, who have responded by upgrading their housing with support from community savings groups, the project still has some way – ten years to be precise – to go before completion. This raises the issue of how cost-effective on-going monitoring of land use is, although Habitat for Humanity has indicated they are committed to continued work on the project.

On the basis of interviews with key stakeholders in the Battambang process, some key features of the experience may be identified:

- Political will

It is not possible to overstate the importance that political will has played in the on-going formalisation of urban poor settlements in Battambang. The Municipality has instated a de facto moratorium on evictions in the city, and municipal staff appear to understand the need for and benefits of formalising poor communities where they are, in contrast to relocation or forced eviction. Stakeholders agree that C03 has acted as a catalyst in promoting multi-stakeholder dialogue on formalisation, although some suggest that this would have happened with or without the Circular, especially given the on-going community empowerment work pre-dating the Circular.

- Existing relationships

Donor presence within Battambang Municipality well ahead of the Circular even being conceived is another key feature in creating an enabling environment for C03 implementation. DED and KAS's long-standing cooperation with the Municipality not only meant C03 implementation has benefited from a strong working relationship across stakeholders, but also that Municipal staff capacity to undertake work of this sort has been significantly strengthened. Some of the work conducted by NGOs also pre-dates the Circular, which has further contributed to the positive multi-stakeholder approach in Battambang.

- Context

Battambang is a provincial town, and despite relatively strong economic growth, land is as yet not in high demand. Therefore, the provision of what might later be prime real estate for the poor is not considered a zero-sum game. Most settlements also appear to be relatively small, with the clear majority of 'informal settlements' surveyed in 2009 containing less than 50 households, some as few as a dozen, while only a handful of settlements are home to more than one hundred households. As a result, any 'loss of land' through the formalisation of these communities is likely to be small. A further consideration is that a large amount of the settlements are located along roads and any upgrading plans on inner-city road corridors can be decided at the provincial level without national level approval.⁹⁷

- Timeframe

Implementation of elements of Circular 03 has been ongoing in Battambang for over two years, while the Garden Area Pilot Project was started over five years ago. Although it must be conceded that the Circular is currently being *piloted* in Battambang, years of work without obtaining tenure security and tangible upgrades for target communities can be frustrating for all involved and lead to low community participation. Already, it seems community enthusiasm for the project in Ponleu Prek Preah Sdach community may be dwindling, as evidenced by their reported lack of motivation to push for project implementation. This situation also highlights the importance of community empowerment for C03 implementation to generate tangible results.

97 TWG Battambang Municipality (2010) *Informal Settlements Survey 2009*.

- Lack of land classification

The steps identified in C03 have not been implemented in order in Battambang, and there is a lack of agreement among stakeholders whether or not this is appropriate. Significantly, Step 2 has not been completed. Given the lack of administrative structures to support land re-classification (Step 2) ahead of other steps (e.g. upgrading plans) this may be reasonable, however, it also raises the risk that despite significant amounts of planning and even upgrading work, communities could eventually be left without secure tenure. Lack of secure tenure could leave the communities exposed to possible eviction in the future, as urbanization gains pace in Battambang and pressure on land consequently becomes greater. In addition, the lack of formal land classification ahead of other steps in the Circular, such as the development of upgrading plans under step 5, may result in households who may have legal possession rights being subjected to Circular implementation. This can be avoided by a full and proper assessment of the land type and nature of residents' occupation either prior to or in the early stages of implementation of the Circular.

- Need for administrative development

C03 cannot be implemented in full until the administrative structure to support its implementation is fully in place. In particular, State Land Working Groups and Management Committees are needed at the necessary levels of government. The lack of a complete institutional framework for C03 creates blockages in its implementation, particularly related to land classification and re-classification. On the other hand, the need for particular institutions to exist in order to continue implementation may form an incentive for those structures to be established and put in place. Given the need for cooperation across different levels of government to implement C03, mobilisation not only of Municipal authorities but also district (Khan) and commune (Sangkat), as well as Provincial, level authorities is also required.

- Individual authorities

The vague and flexible nature of the Circular means that its implementation is strongly founded upon political will, both institutionally and at the personal level. A weakness of relying on individuals' political will to implement any policy, is that a change of the person or persons in power may in turn impact on implementation. This is of particular concern regarding the identification of resolutions, which as noted above lack details for where and when a particular resolution should be applied, and could hence be changed on a particular person's whim.

3.4 CIRCULAR 03 IN PHNOM PENH

CONTEXT

It is widely recognised that the experience of implementing C03 in Battambang cannot simply be replicated in Phnom Penh. This is due to several key factors. Firstly, as outlined above, C03 implementation in Battambang has faced hurdles and challenges that must be addressed prior to wider implementation of the Circular. Secondly, the sheer size of Phnom Penh compared to Battambang means that there are significantly more areas with settlements and households potentially living on state land. Thirdly, the rate of urbanisation is visibly faster in the capital, resulting in more pressure on land, particularly on prime real estate in the city's expanding core, and commercial interests are highly prominent in driving urban development. Fourthly, while district and commune level authorities in Phnom Penh may be more technically skilled than their counterparts in Battambang, the Municipality and its strong links to central government dominate the capital's development agenda, limiting the independence of lower level authorities.⁹⁸ Finally, as outlined above, the history of settlements in Phnom Penh and land sector programmes' failure to address the situation of the urban poor, means there are several tens of thousands of households with undetermined land rights in the capital. The on-going evictions of forced residents have also contributed to an environment characterised by a deep mistrust between the authorities, communities and civil society actors.

Thus, unlike in Battambang where the combination of low pressure on land and engagement with urban poor settlements has led to a de facto moratorium on evictions, despite the approval of the Circular in May 2010, at least 30 communities have since received eviction notices; households from a dozen of these have already been evicted.

The on-going evictions in the capital attest to the two Municipalities' widely different attitudes towards urban poor settlements and the different pressures on land in each city. This has also been experienced by development partners; in contrast to Battambang where GIZ enjoys a positive working relationship with the Municipality, in Phnom Penh the agency has struggled to gain a foothold within the MPP.

As such, while Circular implementation in Phnom Penh in theory presents the same opportunities and challenges as in Battambang, in practice any implementation is likely to face significant practical obstacles and it seems unlikely that lessons from Battambang can be directly applied in Phnom Penh.

IMPLEMENTATION

Information regarding the implementation of C03 in Phnom Penh is available in dribs and drabs, with few outside government being certain of exactly what steps have been taken. However, it appears C03 implementation has been ongoing in the capital since 2010, albeit without the overt support and cooperation of development partners and/or civil society actors. In fact, it seems the MPP has rebuffed at least GIZ offers to implement C03 with a focus on on-site upgrading in Phnom Penh, although the Municipality is currently in negotiations with UN-Habitat regarding future cooperation.

The MPP website offers some insight into on-going implementation efforts. According to the site a first, one-day seminar on the Circular was held for local authorities in December 2010⁹⁹ followed by a 'dissemination meeting to implement Circular N°03' in May.¹⁰⁰ Following this, implementation appears to have been swift: by December 2011, all nine districts (Khans) had reportedly completed appendices 1-4 related to the identification and data collection of all temporary settlements, while Toul Kork, Daun Penh, Russei Keo and Dangkor (partially) districts had also completed time-consuming appendices 6 and 6.1 related to data collection on households in temporary settlements. Implementation was reported to have

98 Paling, W. (2012) 'Planning a Future for Phnom Penh: Mega Projects, Aid Dependence and Disjointed Governance' Urban Studies 2049: 2889.

99 MPP (2010) *Khan/Sangkat authorities must prevent all kinds of illegal shelters on the State Property. December 27, 2010.*

100 MPP (2011) *7 Steps to Effectively Implement Circular N°03. May 23 2011.*

POTENTIAL C03 TARGET AREAS IN PHNOM PENH

MEANCHEY DISTRICT:

- *Ta Ngouv, Ta Ngouv Kandal and Boeung Chhouk, Sangkat Nirout- 54 families*
- *Deum Makloeu and Deum Ampel, Sangkat Chhba Ampov I - 25 families*
- *Sangkat Prekpra - 35 families*

RUSSEI KEO DISTRICT:

- *Stoueng Kombot in Svay Poa commune- 424 houses, 475 families*
- *Borey Mittepheap in Russey Keo commune- 120 houses.*
- *Borey Dem Srol in Russey Keo commune - 63 houses, 63 families*
- *Borey Santepheap Russey Keo commune- approximately 100 houses*
- *Sen Sabay, Sen Rikreay, Sen Ponlor1, 2, and Sen Sou Sdey Russey Keo commune- 334 houses*

SEN SOK DISTRICT:

- *Klaing K8 Deiy Thmei village, Sangkat Phnom Penh Thmei - 38 families*
- *Area of Kok Kleang official centre at Kok Kleang village, Sangkat Phnom Penh Thmei - 8 families*

progressed furthest in Meanchey and Chamkarmon districts, where appendix 5 – the final reports of the SLWG regarding land classification in each settlement – has reportedly also been completed.¹⁰¹

The publicly available information thus indicates that at least Step 1, data collection on actual numbers of temporary settlements, and Step 3, household and population census in temporary communities, have been completed in six out of nine Khans in the city. In addition, Step 2 – identification, mapping, and classification of the sites of temporary settlements – appears to have been at least partially completed in Meanchey and Chamkarmon districts.

The MPP has also been requested to submit a selection of 100 families from various districts to the MLMUPC for onsite development in the context of Circular 03. According to a post on the MPP website in December 2011, ‘Khan Sen Sok, Toul Kork and Meanchey confirmed the availability for onsite development, whereas Khan Toul Kork, Chamkarmon, 7 Makara and Russey Keo said they have no site for such development.’¹⁰²

Letters from Meanchey and Sen Sok districts to the Municipality in July¹⁰³ and August¹⁰⁴ 2011 respectively attest to the fact that Khan authorities have been requested to identify target communities. However, contrary to the above, in his letter to the MPP, the Chair of Khan Mean Chey identifies relocation as the solution for 114 families at three locations identified. According to lists obtained from civil society actors involved in the process, a total of ten locations in the city (see Figure 10) have been identified as potential target areas, although it is not clear what resolution is planned for each location.

In December 2012, the MPP published an assessment on the urban poor in the city. Prepared with technical support from the United Nations Children’s Fund (UNICEF), the assessment features a summary of interviews with 281 communities across the capital’s nine khans, including basic de-

101 MPP (2011) *Phnom Penh Speeds up the Process of Circular N°03*. December 21, 2011.

102 MPP (2011) *Phnom Penh Speeds up the Process of Circular N°03*. December 21, 2011.

103 Kouch, C. (2011) *Letter from the Chair of Khan Mean Chey to H.E. Chair of the Capital of Phnom Penh: Request for solution policy for temporary settlements in 6 locations*. July 18, 2011 (Unofficial Translation).

104 Ly, S. (2011) *Letter from the Chair of Khan Sen Sok to H.E. Chair of the Capital of Phnom Penh: Report on the selection of citizens’ temporary settlement locations*. August 8, 2011 (Unofficial Translation).

Figure 10: Potential C03 target areas In Phnom Penh

tails on settlement areas, housing, demographics, socio-economic situations, and existing infrastructure and services. Although the assessment contains no references to Circular 03, the exercise of locating and surveying urban poor settlements is remarkably similar to the informal settlement survey conducted in Battambang ahead of C03 piloting.

COMMUNITY IMPACT

While the MPP claims to have conducted extensive work in identifying temporary settlements and even enumerating households in the settlements, the settlements targeted, or potentially targeted, by C03 implementation have seemingly been kept out of the loop. For instance, although the MPP claims appendices 6 and 6.1 (related to data collection on households in temporary settlements) under Step 3 of the Circular have been completed in four Khans, none of the 15 communities in Toul Kork, Daun Penh, and Russei Keo districts interviewed for this report (including communities on the above list) recall any public display of household statistics in their communities. Neither do families in the Nirot commune area in Meanchey district recall joining meetings, participating in consultations, or seeing public displays as outlined under Steps 1-3 of the Circular.

Instead, at least one community targeted for Circular 03 implementation in Toul Kork district claims households were 'tricked' into thumb-printing C03 documents. Community representatives state they were told a community census was being conducted, however when the authorities returned the relevant documents to community members these stated the households had agreed that they are illegal. This version of events is corroborated by civil society actors: 'The survey being done is not participatory as it should be in the C03 process,' said one NGO staffer who has been monitoring implementation. 'For communities it is a big concern: the authorities say they have come only to do a survey or census of the community, they don't inform the community it's about C03.'

In Russei Keo district, settlements included on the list of potential target areas also express confusion, fear, and uncertainty regarding C03. At least three of the communities state they have been denied titling in the past, on the basis that they are living illegally on the riverside but without proper adjudication. Community representatives in one of the communities stated they had been asked to thumbprint C03-related documents in 2011, but refused to do so because they do not agree that they are 'illegal'. As a result, the situation in the community is at a stalemate.

At the same time, in Ta Ngouv, Nirot commune – one of the areas identified in the letter from Meanchey district – 48 households received an eviction notice on September 28, 2012, giving them one week to remove their homes from on and/or along a canal. On October 23-24, the authorities demolished eight homes in the area before community protests brought the demolitions to a halt. Initially only one family received compensation of US\$6000, while the rest were given US\$50 per family and told they would be able to rebuild their homes following cleaning of the canal, although no written assurance of this was provided. Later, the remaining households received between US\$1500 and US\$3000 each and were told they would not be allowed to rebuild in the area. Despite the canal area having seemingly been identified for C03 implementation, procedures outlined under the Circular were clearly not followed in the eviction of the eight households, while some 40 households remain under threat of eviction.

The scenario was repeated a few months later further west along the canal, when six households were told they had one week to either dismantle their own homes and receive US\$2,000 in compensation, or their homes would be demolished with no compensation provided. When interviewed the day after having agreed to dismantle their homes, the affected households stated they felt that they had no choice but to accept, so that they could salvage their possessions and house construction materials. They also expressed despair regarding their future; 'We have nowhere to go.' Circular 03 was not mentioned in the negotiations.



Provision of tenure security for poor households is proceeding with potentially more success in Sen Sok district, where local authorities together with the MPP have decided to establish a committee to measure and ‘deliver land’ – meaning on-site tenure security according to local authorities – to ‘residents in temporary settlements on state public land in 09 communities of Khmounh commune’.¹⁰⁵ Although a letter obtained by communities in the area does not reference the Circular, the logic of the letter is remarkably similar to that of C03. In addition, communities Sen Sabay, Sen Rikreay, Sen Ponlor 1 and 2, and Sen Sou Sdey, previously identified for C03 implementation, are located in Khmuonh commune and appear set to benefit from the measure. While upgrading and formalisation of the communities is welcome, it is interesting to note that the target area is in fact a relocation site known as Anlong Kngan for people evicted from the Tonle Bassac area in 2001. The beneficiaries appear to be former renters who following eviction were not given plots of land in Anlong Kngan but built their homes there regardless, often on less desirable land such as over swamps and ditches. The area is also located at the outskirts of the city, where pressure on land, although growing, is relatively limited.

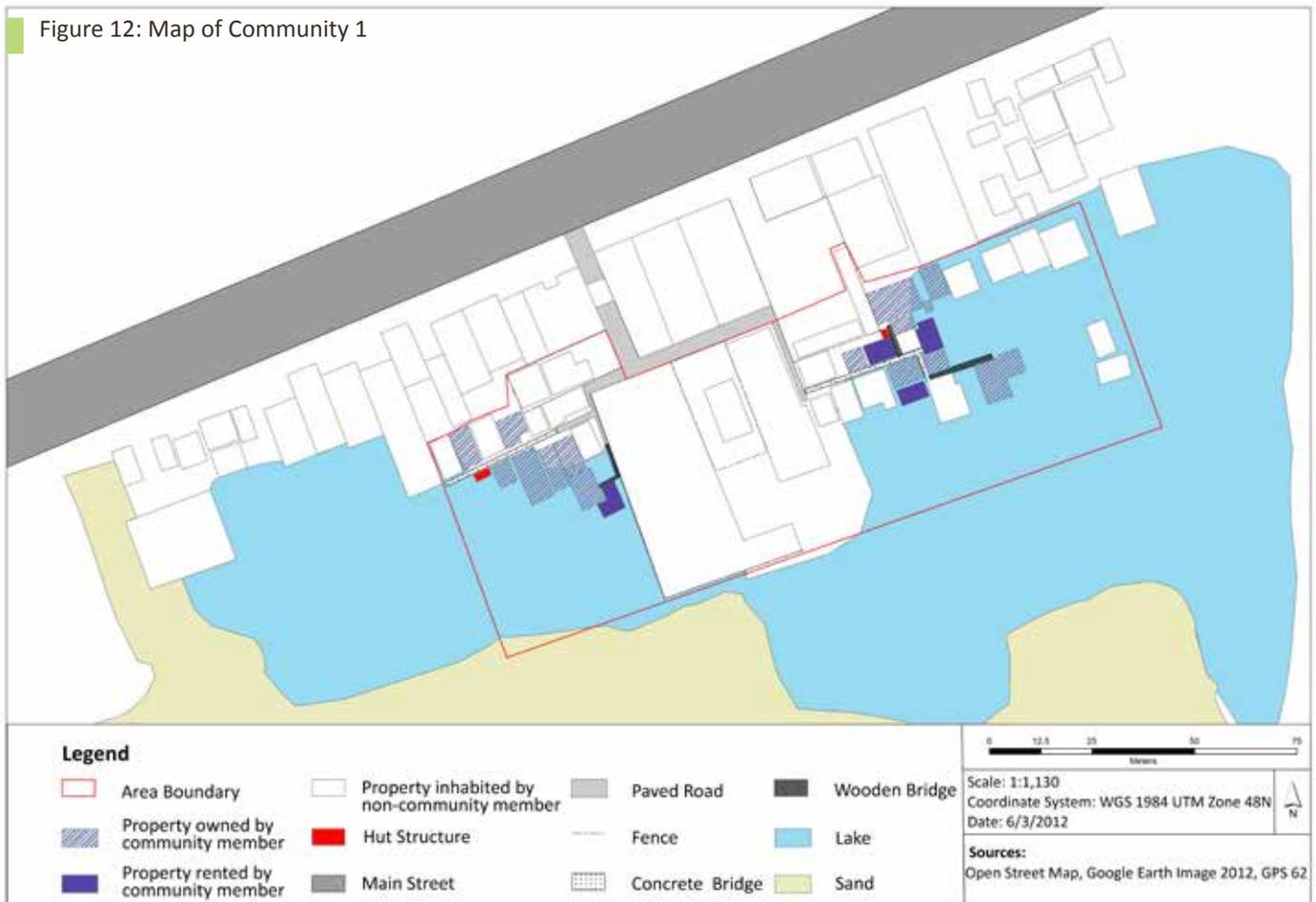
The above clearly shows that the wheels are in motion for C03 implementation in Phnom Penh. However, steps so far have been taken unilaterally by the authorities, in conflict with one the most positive aspects of the Circular, namely its commitment to a transparent, multi-stakeholder approach throughout implementation. As the following case studies illustrate, establishing land rights to a particular parcel is not always straightforward, particularly in poor communities neglected by land registration efforts, and as such, inclusive, transparent and public efforts to implement the Circular are sorely needed.

¹⁰⁵ MPP (2012) *Decision N°133 On Establishing a Committee for Observing and Measuring Land for Residents of Temporary Settlements on State Public Land in 09 Communities of Khmounh Commune, Sen Sok district, Phnom Penh.*

3.5 CASE STUDY: COMMUNITY 1

COMMUNITY PROFILE

Community 1 is located on the north-eastern edge of Boeung Tompun Lake, by Street 271 in Chamkarmon district. 19 households (24 families) are members of the self-defined community, which formed in 1998 with assistance from the Urban Poor Development Fund (UPDF). A total of 43 households occupy the area in which the community resides (See Figure 12), although not all residents identify as community members.



According to community members, in 1979 the land close to the lake was covered in reeds, plants and trees, and an old villa was located next to Street 271. In the 1980s people began occupying and settling the area and built houses freely. The community was mainly composed of people from Svay Rieng Province. The land close to the lake was used as a rice field and solidarity groups grew rice communally during the dry season. In 1984 the rice field was divided between the households who had settled in the area and they began growing morning glory and water mimosa. In 2000, the land that was used for hydroculture was purchased by private investors and the owners in the community were paid for the sale of their land. In 2009 the area previously used for hydroculture was filled with sand. As such, the community is no longer located by the lake proper, instead, it is located by a small pond surrounded by sand (see Figure 14). Community members have not been told what is planned for the filled in part of the lake.



Figure 13: Satellite image of Community 1

Year of settlement	Before 1980	1981-1990	1991-2000	2001-2012
Number of households	1	6	8	4

Figure 14: Length of residency in Community 1

The community is visibly poor. Most houses in the community have one floor but are built on stilts/pillars over the lake. The quality of these pillars varies with seven households having low quality wooden pillars and a further seven having high quality concrete pillars. Many houses have wooden floors and walls, and most have zinc or concrete roofs. Of the 78 community members aged 18 and above, 57 earn incomes in low paid, relatively unskilled jobs. The most common income earning activities are working in garment factories, working as motorcycle taxi drivers, and working in private companies. 12 women are currently housewives; female unemployment is a community concern. Most community members earn an income relatively close to their homes, and the majority of school-aged children attend nearby state or private schools.

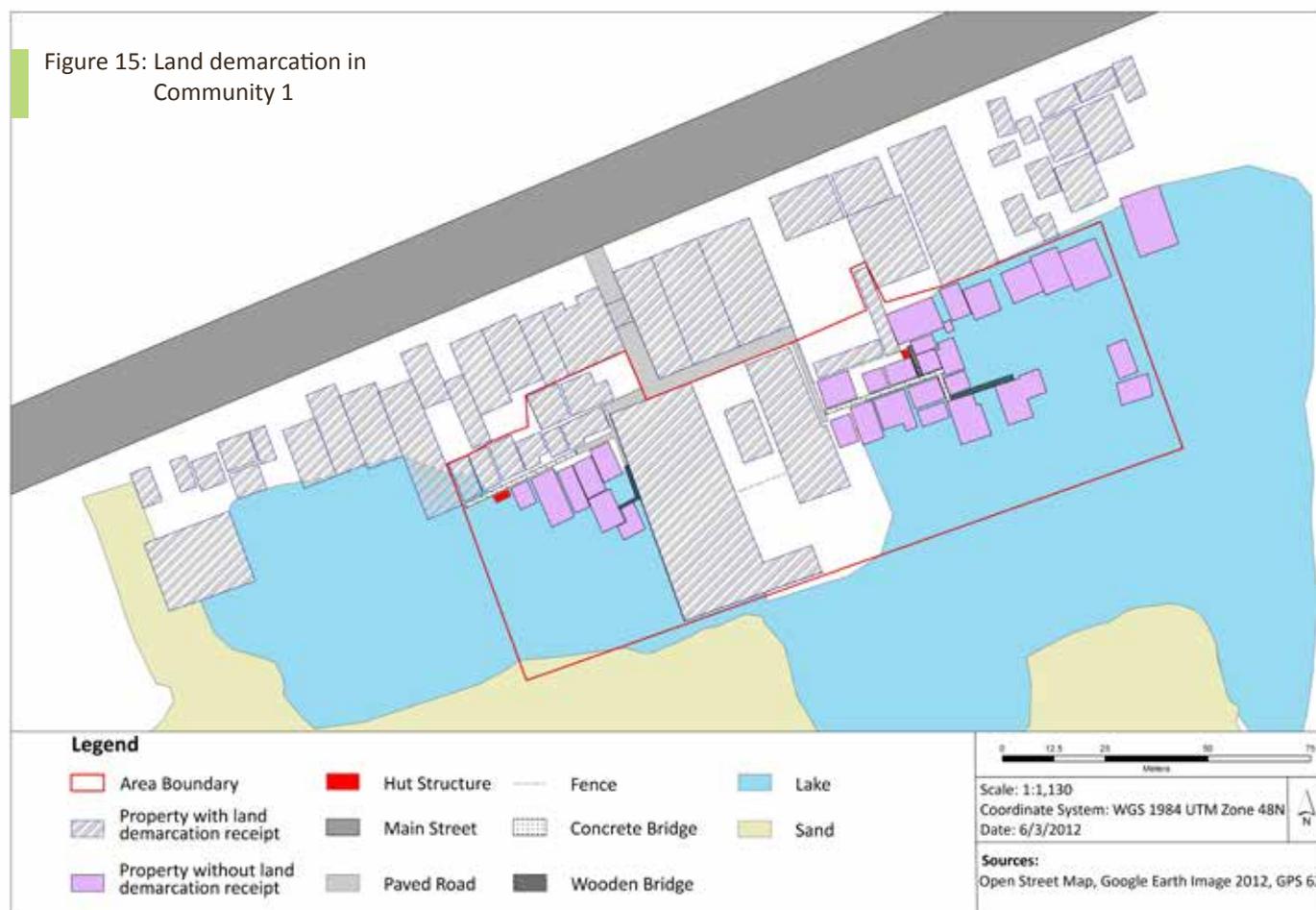
Asset holdings in the community are modest; only one household is in possession of a car and although 18 out of 19 households possess a motorbike and most households possess televisions and fans, there is little evidence of other larger consumer items. No households contain a refrigerator and only six out of 19 possess a bed.

Accessing state utilities is a challenge for a large minority of households within the community. Eleven out of 19 households are connected to state electricity supply, while the remaining eight connect via their neighbours, mainly because they cannot afford the connection fees. These households pay significantly higher amounts per unit for private access: the median price for state electricity is 720 Riels/kWh, while the median price for supplies from private providers is 1500 Riels/kWh.¹⁰⁶

¹⁰⁶ US\$1 = 4000 Riels (approximately)

The situation is similar with regards to access to piped water from the Phnom Penh Water Supply Authority (PPWSA): eight out of 19 households have access to PPWSA water, eight access private water supplies through friends or neighbours, and three access water from middlemen. The households without connections report that they do not have a connection because they cannot afford the connection fee. Private water is more expensive than public: the median price for PPWSA water is 550 Riels/m³, while the median price for water from private providers is 2000 Riels/m³. Eighteen of the 19 households have their own toilet, with 10 of these being latrines overhanging the lake.

In 2011, SLR was conducted in the area and households located close to Street 271 have receipts from the process. Among the households that underwent SLR, only two are members of the community. Their homes are located *on the banks* of the lake as opposed to *over* the lake. The households that were excluded from the process are not aware of the reasons they were excluded. (See Figure 15 for details)



No households in the community have land titles, however, community members have a reasonable amount of documentation. Of the 19 households, all possess Birth Certificates and National ID Cards, 18 possess a Voter ID Card, and 15 possess a Resident's Book, with the remaining four households renting their homes. Only 13 households have Family Books, however, a figure that is relatively low compared with other poor communities. Five households claim that they have never had a Family Book, which may pose problems for them when accessing services and securing tenure.

Fifteen house owners in the community were interviewed; the remaining four households rent their homes. Of the 15 owners, 12 purchased their home/land and three inherited it from relatives. Two households in the community received receipts as part of the systematic land titling process. None of the households possess ownership documents issued by the Municipality or district, although 10 out of the

15 possess occupancy support letters issued by the commune or village. Eight households possess sale transfer/transaction letters signed by the commune or village, one household has lost this document, and one household does not currently have possession of this document. No one in the community has ever been told that they are not allowed to live on the land in the community.

Figure 16: Household ownership in Community 1

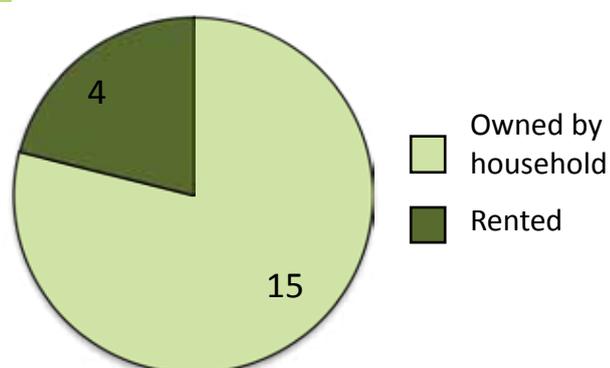


Figure 17: House acquisition in Community 1

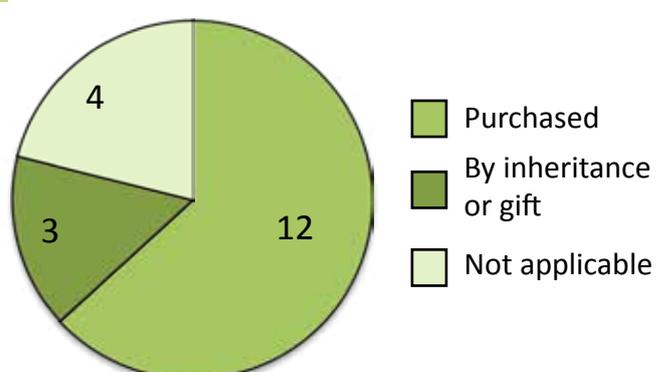


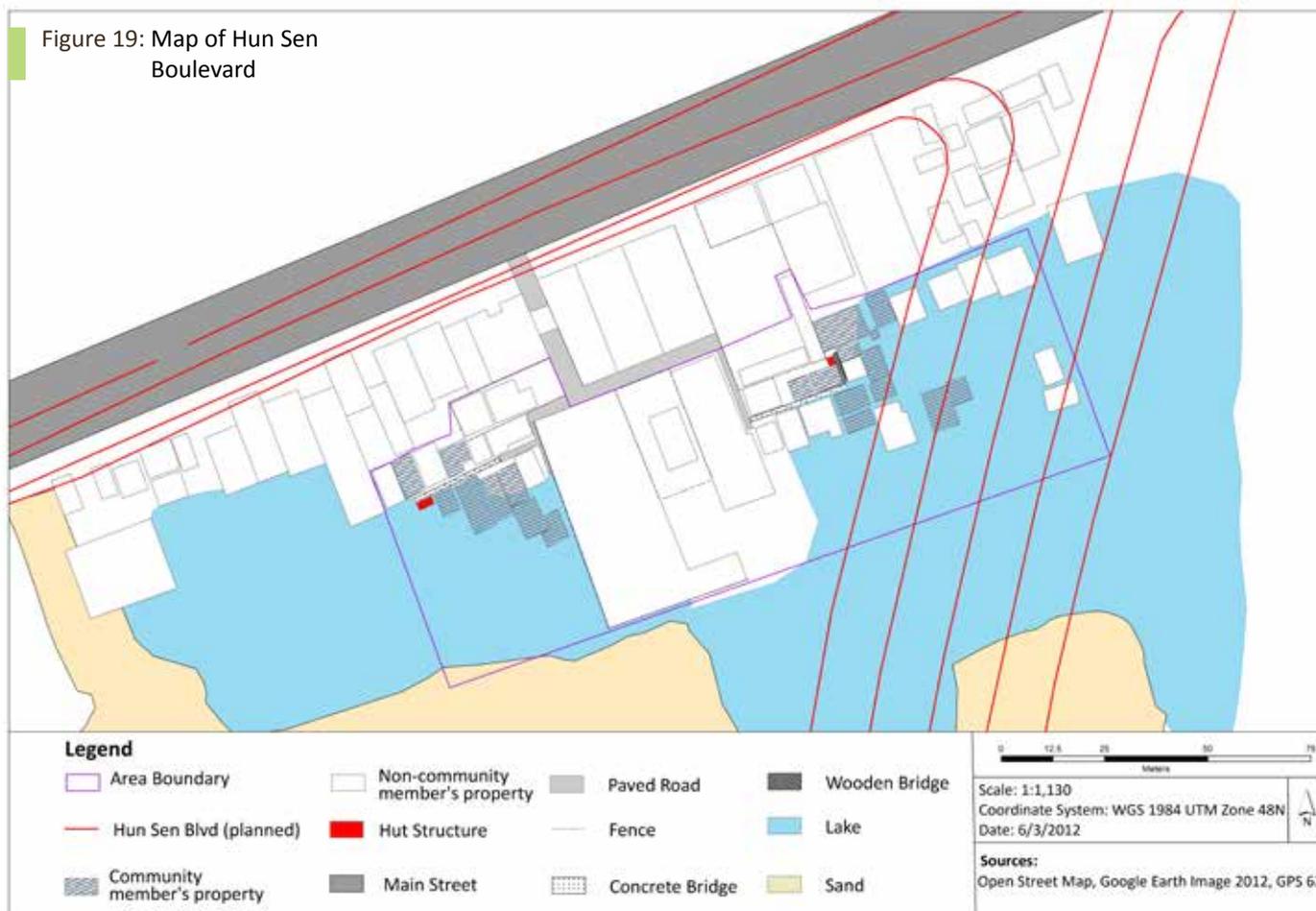
Figure 18: Land documentation in Community 1

	Full cadastral land title issued by the National Government	Ownership document issued by the Municipality of Phnom Penh or district	Occupancy support document issued by the commune or village	Transfer/transaction letter signed by the commune or village	Transfer/transaction letter <u>not</u> signed by the commune or village
Yes	0	0	10	8	0
Yes but not in current possession	0	0	0	1	0
No – lost it	0	0	0	1	0
No-never had one	15	15	5	5	15
Not applicable	4	4	4	4	4
Total	19	19	19	19	19

Nevertheless, the community is currently under threat of eviction, as the Municipality of Phnom Penh is planning to construct Hun Sen Boulevard across Boeung Tompun Lake.¹⁰⁷ The planned route of the road that will connect Hun Sen Boulevard to Street 271 transects the community. (See Figure 19) Although the community will clearly be affected by this road construction project, representatives from the local authorities have not communicated with community members. The community heard about the project via television coverage and informal rumours. The community does not want to move from this location but if they have to, they believe that appropriate compensation should be provided.

107 MPP (2011) *Samdech HUN SEN Blvd., a New Blood Vessel for Southern Part of Phnom Penh*. March 4, 2011.

Figure 19: Map of Hun Sen Boulevard



Most households are unaware of Circular 03 and have never had any contact with officials in relation to the Circular. Two out of the three households who had heard of the Circular were informed about it by the community leader who was informed by the Sangkat Chief. The community is not featured in *The Phnom Penh Urban Poor Assessment*.

Figure 20: Tenure security in Community 1

In relation to tenure security, to what extent do you agree with the following statement 'I feel safe and secure in this community'?	Strongly agree	Agree	Neither agree nor disagree	Disagree
Number of households	3	3	2	7

*N=15 as renters were not asked

LEGAL NOTE

PRELIMINARY IDENTIFICATION OF LAND

Residents in the community live on or adjacent to Boeung Tompun lake, and the exact location of the residents' homes in relation to the lake is important in assessing the legality of their settlement. According to the 2001 Land Law, any property that has a 'natural origin' is state public property. This includes lakes.¹⁰⁸ The Land Law is clear in stating that state public property is inalienable and cannot be acquired through legal possession,¹⁰⁹ and improper occupation of state public land is an offence punishable by a fine and/or imprisonment.¹¹⁰ Occupation of state public property may be authorized, although this occupation must be temporary and revocable, and this cannot be transformed into ownership, and the occupant has no right to transfer the land.¹¹¹

The Land Law and Sub-decree on State land Management do not clearly define what is regarded as a 'lake', but in 2006 the Ministry of Land Management, Urban Planning and Construction issued a Decision which clarified the criteria for classifying the various types of state land. This Decision explains that:

- The body of a natural lake, limited to the water line of dry season is state public land; and
- The land area between the highest water line of rainy season and lowest water line of dry season is state private land, except those parts that clearly have public use or public interest that shall be classified as state public land.¹¹²

Maps of the survey area indicate that a large minority of structures (around 47%) are located on/over the lake during the dry season, which means that they are located on state public land as defined by the above legislation. The remaining structures are at least partly located on land or in the area that floods during wet season. (See Figure 21) As such, these people may be able to claim legal possession of their land if they meet the necessary criteria, as discussed below. The lake is in the process of being filled with sand in order to create land for development, as mentioned above, which means that the lake no longer exists in its original form around the households in question and the occupants in question are now situated by a small pond surrounded by sand. It is unclear what impact this would have on the occupants claim for land title, as the lake has now clearly lost its public interest value and has been approved for development.

Figure 21: Physical location of households in Community 1

Community households		Non-community households		Total households	
19		24		43	
Over lake all year round	Over lake only in wet season	Over lake all year round	Over lake only in wet season	Over lake all year round	Over lake only in wet season
11	8	9	15	20	23

CURRENT TENURE STATUS

The data gathered during this survey is not detailed enough to make definitive assessments of each family's tenure situation, however, the following general observations can be made:

OWNERSHIP

No one within the study area was in possession of a land title, which is the only undisputable evidence of land ownership. The SLR process did commence in the area, but there has been little movement since 2009.

108 RGC (2001) *Land Law 2001, Article 15*. See also, *Sub-decree N°118 on State land Management 2005, Article 4*.

109 RGC (2001) *Land Law 2001, Articles 16, 18 & 43*.

110 RGC (2001) *Land Law 2001, Articles 248 & 259*.

111 RGC (2001) *Land Law 2001, Article 16*.

112 The Ministry of Land Management, Urban Planning and Construction (2006) *Decision N°52 to Attach the Text on Criteria for State Land Classification as an Annex of Prakas N°42 Dated 10 March 2006 on State Land Identification, Mapping and Classification, 25 December 2006 (point II)*.

The survey shows that in late 2009 those households living along Street 271 had their land plots adjudicated and received demarcation receipts from land registration teams. These receipts were given only to those living on the land around the lake, and no households living over the water received receipts. Within the study area only two households received such receipts, but the residents have heard little since then, and the registration process appears to have stalled for over three years.

LEGAL POSSESSION

Those residents that do not live on state public land may have claims to the land as legal possessors. This depends on whether possession of the land commenced prior to the passing of the 2001 Land Law, and is contingent on their occupation meeting the five further basic criteria discussed in the main body of the report.

The background information gathered during the survey shows that the community is well established and the majority of residents have lived there since prior to the Land Law being passed (the cut-off point for legal possession). Only three community members moved there after this date, but the new-comers could also have legitimate claims as legal possessors if they can prove the previous owner(s) legally possessed the land prior to the Land Law being passed. As explained earlier, if the land is found to be state public land, no possession is legal.

OFFICIAL RECOGNITION OF OCCUPATION

None of those surveyed held a valid land title, but all of the home owners interviewed did have some form of recognition from local level authorities. For the most part this took the form of a document provided by the commune or village level confirming occupancy. These documents were generally provided after home owners approached the commune or village and paid a fee. At least half of those interviewed had the land transfer contract witnessed by the commune or village when they purchased the land.

While these documents suggest that community members had the approval of local authorities to occupy the land, these documents are not evidence of ownership, and may only be used as supporting evidence if households do attempt to claim ownership of the land. In particular, the documents would help to support a claim of legal possession as they indicate that the occupants' possession was unambiguous, notorious and in good faith. However, it is illegal for any local authority to issue documents that authorise the occupation of state public land, and if it is found that the land in question is state public land, these documents are not valid.

COMMERCIAL DEVELOPMENT OF THE AREA

The above analysis is complicated somewhat by the presence of a huge private development, which lies adjacent to the study area, as well as extensive infrastructure projects. The planned 60m wide Hun Sen Boulevard will overlap the existing community, and will no doubt also require a vacant right of way area on either side. This will clearly impact upon local residents. Additionally, the private company ING Holdings has reportedly been granted the right to develop a large, over 2,500ha commercial and real estate zone just south of the study area.¹¹³ As discussed above, south of the community lays Boeung Tompun lake, which according to the Land Law is state public property.

If the company has indeed received approval for this project (requested in April 2011), the land must first have been re-classified as state private property. This process is legal, but is often conducted in a manner that is lacking in transparency. If state land loses its public interest the Land Law states that such reclassification can be conducted according to a specific law on transferring state properties, although such a law does not currently exist.¹¹⁴ Instead re-classification is currently being conducted in accordance with a sub-decree. It is not clear at present if the land has indeed been classified, but no consultations were conducted with local people, as is required by Sub-decree N°118 on State Land Management.

113 ING Holdings Co. Ltd. (2011) *AZ Town The Future of Phnom Penh*.

114 RGC (2001) *Land Law, Article 16*.

LINK TO CIRCULAR

Very few interviewees in the area had heard of Circular 03, and at present there is no indication that Circular 03 will be piloted in this area. However, the case could raise some interesting issues if the community is eventually subject to the Circular. Principally, there is a lack of clarity between where exactly the boundary of the lake is (if indeed it can still be considered a lake), and therefore which areas are state public property. As the community is well established and most residents can prove occupation or a chain of possession going back many years, provided the land they are occupying is not state public property, they may have claims as legal possessors. If so, they are not illegal occupants and should not be subject to the Circular.

The community presents a case where the stage of the Circular concerned with identification, mapping and classification of land could be complex. The community may also be impacted by the part of the Circular that states that during the identification stages, areas with an 'existing land use plan' be identified as such. As the area is earmarked for extensive commercial and infrastructure developments, it is possible that these approved projects may override residents' land claims.

A further challenge may be in identifying appropriate community representatives. As indicated above, within the survey area not all households identified as being 'community members'. Because of this, if the community were to be subject to the Circular, when selecting community representatives to engage with the local authorities and sit in community meetings it should be ensured that the selected individuals adequately represent all community members.

SUMMARY

- Almost half of residents appear to be residing on state public property as they are permanently located on the lake.
- Over 50% of structures are at least partially on either dry land or within the area between low and high water line – not state public property.
- Those who do not live on state public property may have claims to their land, and most have resided there since before the Land Law was passed in 2001.
- It is beyond the scope of this study to assess the potential tenure status of each individual household, but some general observations can be made:
 - There are no households with land titles in the study area;
 - Those living along the road received land demarcation receipts, but not those around or on the lake;
 - Land titling seems to have stalled, probably because of the development projects on-going in the area; and
 - All residents have recognition from local authorities, although these documents are not strong, but could be used as evidence of possession if households were to apply for land titles.
- If legal possessors are affected by the road development, they should be subject to the Law on Expropriation. Illegal settlers could be subject to the Circular.
- The private lake development confuses the issue of the legal status of the land. It is not clear if the land has been re-classified or not, and what implications this has for the community surveyed.

ALTERNATIVE PLAN

As noted above at least twenty households in the survey area may be located on state public land and hence subject to the Circular. As a result of the construction of Hun Sen Boulevard and the plans for AZ Town, several more households in the general area may also be subject to relocation (See Figure 19). While any household with possession rights in the area should receive market rate compensation for any loss of land or structures as per the Law on Expropriation, households on state land could benefit from on-site upgrading as per the Circular.

Figure 22 shows a possible on-site upgrading plan for the area, with households over the lake relocated to new housing on land reclaimed from the lake. The housing complex features 36 plots, fit to house not only residents of the community, but also residents in the adjacent areas that are likely to be affected by the construction of Hun Sen Boulevard. The plan also shows how the housing area could be expanded either to the west or south of the planned complex.

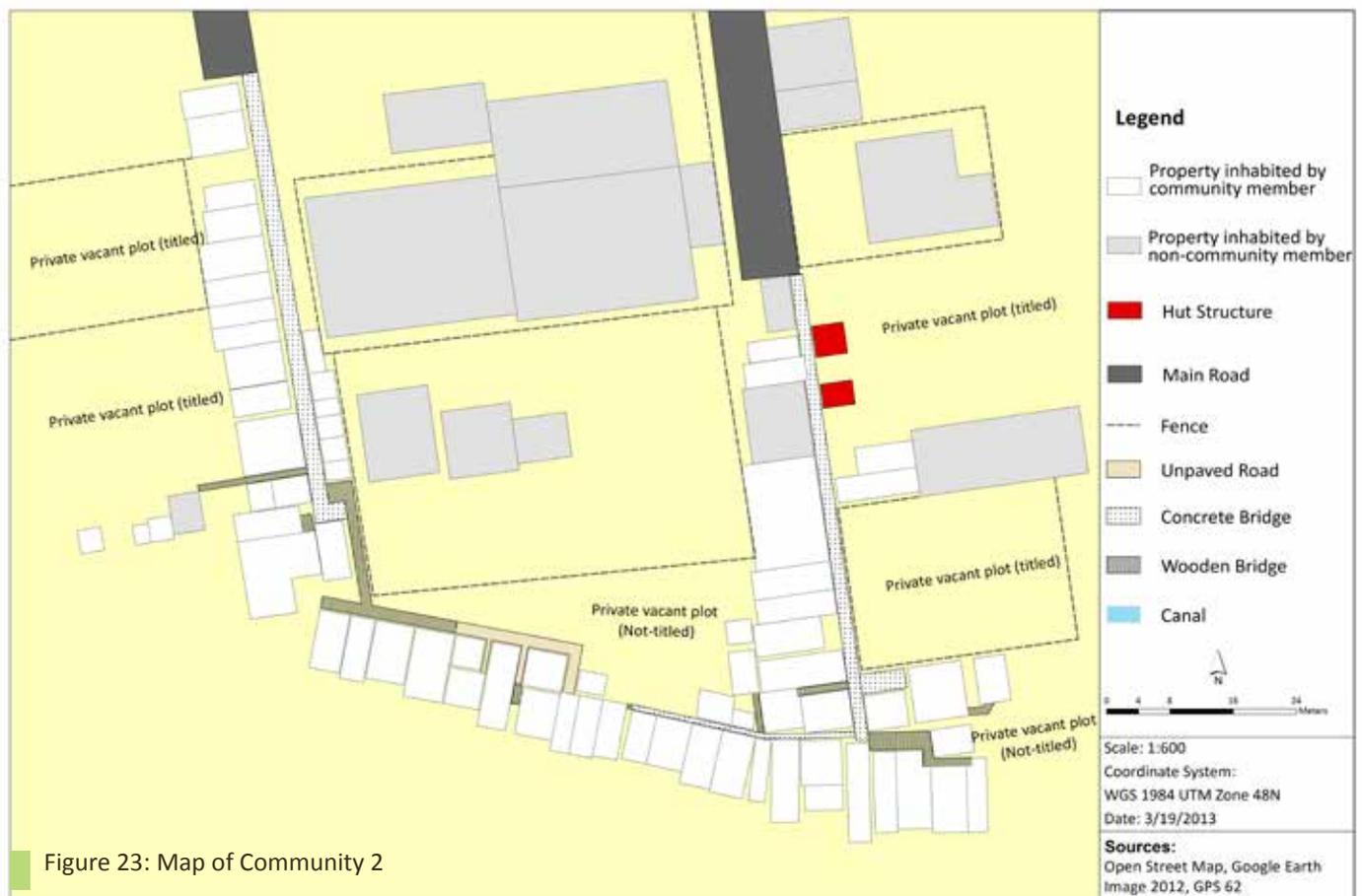


While the plan includes filling in of a small part of the existing lake, this appears to be already included in the existing development plans for the area, and as such should not pose an obstacle.

3.6 CASE STUDY: COMMUNITY 2

COMMUNITY PROFILE

Community 2 is located in a cul-de-sac by a drainage canal near Boeung Trabek lake in Chamkarmon district. Eighty eight households are members of the self-defined community, which formed in 2004 around a savings group supported by the UPDF. There are approximately 85 building structures in the area, and community members reside in 70 of these (see Figure 23). As part of the community survey, households in 69 building structures were surveyed. Eighteen structures contained two households, divided into 'primary occupants' and 'secondary occupants', with the latter generally referring to married children of the former, or renters. Some of the houses in the community are located on dry land, while others are partially located over the canal, particularly in the rainy season when the canal expands.



Community members say the area was first settled in the 1980s. At the time, given the area's natural low elevation and location in between two lakes, it was frequently flooded, especially during heavy rains. Residents in the area grew water hyacinth and morning-glory on the existing canal. In the 1990s, more people from other provinces around Phnom Penh settled down in the area due to its central location and easy access to services such as markets, schools, hospitals and pagodas, as well as nearby job opportunities. Most of the people worked as garment factory workers, food sellers, construction workers, waste pickers and *motodop* drivers. The majority of households settled in the community before 2001, while 25 households settled in or after 2001.

Figure 24: Length of residency in Community 2

Year of settlement	Before 1980	1981-1990	1991-2000	2001-2010	after 2011
Number of households	3	8	32	23	3

In 2010, the Municipality of Phnom Penh began rehabilitating the Boeung Trabek canal to protect the area from flooding in the rainy season. On September 17, 2010, Chamkarmorn district sent a joint letter to the community informing all households, including those not living adjacent to the canal, that they would have to vacate the area. According to the letter the residents are illegal occupants of the Boeung Trabek basin. The community was told it had ten days to 'voluntarily' leave. In response, the community sent letters to Khan authorities and protested to the MPP as well as the Prime Minister's cabinet. As a result, the community was informally told by district authorities that if the community agreed to 'be quiet', no homes would be demolished.

A few days later, residents saw an excavator dig and pump mud from the canal, but they faced no problems. Although the community has not been threatened with eviction since, residents are concerned about their future as all except two households in the community were excluded from SLR conducted in the area in 2010. The two households that were included received land titles in 2012 along with other non-community households in the area. Figure 25 shows that the two households that received land titles are located at the end of the formal street. However, some of the bigger plots 'inside' the community also received titles.



Figure 25: Land titling in Community 2

The community is visibly poor. It is accessed through narrow concrete paths, at the end of two formal streets. Most houses have one or more floors but are built on stilts/pillars over an area that occasionally floods. Most houses have wooden floors, walls made from metal sheets, pillars made from low quality bamboo or wood, and zinc roofs. The majority of households have private toilets, which flow into the

canal. The community is however serviced by CINTRI garbage collections service, and in 2004 a concrete bridge was built in the community with government assistance.

There are 257 community members aged 18 and above, and 188 of these earn incomes in low paid, relatively unskilled jobs. The most common income earning activities are working as small-time vendors or mechanics, in private businesses, as factory and construction workers, and as rubbish collectors and cleaners. Thirty four women are currently housewives. Most community members earn an income relatively close to their homes, with 41 community members working within 2km of the community and a further 46 community members working within 5km of the community. Many community members have mobile occupations. The majority of school-aged children attend school.

Asset holdings in the community are modest; only two households are in possession of a car and 42 possess a motorbike/scooter. Most households possess televisions, fans, and mobile phones, but there is little evidence of other larger consumer items. Six households have refrigerators; 31 have beds and 33 have stereos.

The community is reasonably well documented: Of the 69 primary occupant households, 64 possess Birth Certificates, 53 possess a National ID Card, and 64 possess a Voter ID Card. However, only 34 possess a Resident’s Book and only 25 households have Family Books, figures that appear to be relatively low compared with other communities that have been surveyed. Thirty nine households claim that that have never had a Family Book and this may pose problems for them when accessing services.

Of 69 primary occupant households, the majority (55) declare themselves owners, while six households rent their homes, three share their living space with the owners without paying rent, and a further five households live rent-free on properties they do not own. Of the 55 owners, 42 purchased their home/land, four inherited it from relatives, and nine households cleared and occupied vacant land.

Figure 26: Household ownership in Community 2

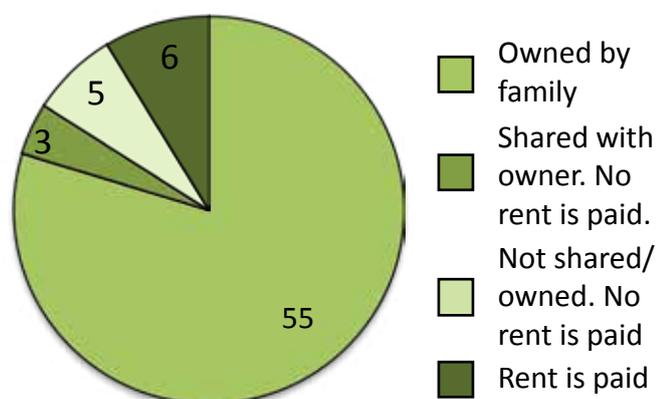
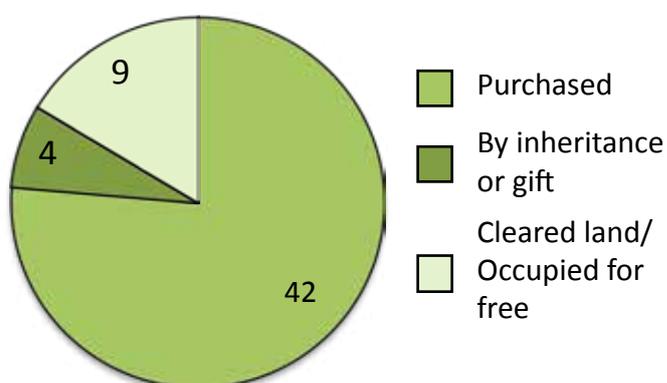


Figure 27: Household acquisition in Community 2



Two primary occupant households in the community have received receipts and land titles as part of the systematic land titling process (although these are currently pawned). Twenty eight out of the 55 possess occupancy support letters issued by the commune or village, one household stated it had such a document but that it was currently not in its possession, while 26 households stated they had had such documents but lost them. Twenty eight possess sale transfer/transaction letters signed by the commune or village, one household has lost this document, and three households do not currently have possession of this document. Only four out of 87 households in the community have heard of the Circular. The community is featured in the Municipality’s *The Phnom Penh Urban Poor Assessment*.

Figure 28: Land documentation in Community 2

	Full cadastral land title issued by the National Government	Occupancy support document issued by the commune or village	Transfer/ transaction letter signed by the commune or village	Transfer/ transaction letter <u>not</u> signed by the commune or village
Yes	0	28	28	9
Yes but not in current possession	2	1	3	1
No – lost it	0	26	1	45
No-never had one	53	0	23	0
Not applicable	0	0	0	0
Total	55	55	55	55

Perceptions of levels of tenure insecurity are generally high – 39 households disagree with the statement that they ‘feel safe and secure in the community’

Figure 29: Tenure security Community 2

In relation to tenure security, to what extent do you agree with the following statement ‘I feel safe and secure in this community’?	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Number of households	1	6	8	39	1

Accessing state utilities is still a challenge for a large minority of households within the community. Thirty out of 69 primary occupant households are connected to state electricity supply, 24 connect via their neighbours or middlemen, mainly because they cannot afford the connection fees, while 15 do not have a connection at all. These households pay significantly higher amounts per unit for private access: the median price for state electricity is 720 Riels/kWh, while the median price for supplies from private providers is 1500 Riels/kWh.

Thirty six out of 69 primary occupant households access piped water from the PPWSA, 30 access private water supplies through friends or neighbours, and three access water from middlemen. The majority of households without connections report that they do not have a connection because they cannot afford the connection fee. The median price for PPWSA water is 770 Riels/m³, while the median price for water from private providers is significantly higher at 2500 Riels/m³.

Although the savings group that started the community is now defunct, levels of social capital and trust in the community appear to be reasonably high; 38 of the 87 households believe that in general local people can be trusted, and 17 households state that ‘all of their neighbours are good friends of theirs’, with 25 households stating that they have ‘many good friends or neighbours in the community’. There are, however, 39 households that stated that they have ‘some good friend and neighbours’, and six households do not have ‘many good friends or neighbours’ in the community.

LEGAL NOTE

PRELIMINARY IDENTIFICATION OF LAND

Residents in Community 2 live close to a drainage canal that runs between Boeung Trabek and Boeung Tompun lakes. Some houses sit partially over-hanging the drainage canal, whereas others are set back from the canal. The canal has been there for many years but is presumably manmade, given its lay-out. SLR was conducted in the area in 2010 and titles were delivered in 2012, but only two households within the community received land titles. This suggests that the Municipality deems the community to be illegally settled on state land (this returned to in the following section).

The status of the land is not entirely clear, as manmade canals are not included in the list of state public properties contained in Article 15 of the Land Law. The Sub-decree on State land Management also fails to identify canals as state public property. However, Article 4(h) of MLMUPC Decision 52 (2006) on standards for state land classification says 'Sewage-drainage canal/system along undeveloped roads must be classified as state public land.' As such, the canal itself is state public land, but there is a lack of clarity as to how much land, if any, adjacent to canals is also state public land. Given that occupation over canals and on their banks may lead to pollution and blockages by sewage and solid waste, which will impact on the function of the canal, it can be expected that some land on the banks of canals may also be regarded as state public property by the RGC, although the legal basis for this is unclear. As discussed in the case of Community 1, state public property is inalienable and cannot be acquired through legal possession.¹¹⁵ Occupation of state public property may be authorised, although this occupation must be temporary and revocable, and this cannot be transformed into ownership, and the occupant has no right to transfer the land.¹¹⁶

For the above reasons, the households that overhang the canal are likely to be deemed to be residing on state public property, and it is possible that households occupying the banks of the canal may also be, at least partly, deemed to reside on state public land. However, around 50% of households within the community are situated away from the canal. These households are located on dry land and run north from the canal to the end of roads 97 and 99. These areas do not clearly fit any category of state public land, and as can be seen from the maps, larger houses directly adjacent to Community 2 received land titles through the systematic registration. A copy of a land title issued to one community household located alongside the road indicates that the road is deemed to run all the way to the canal, although in reality no such road exists. It could be that the road did once extend further, and now the existing residents are deemed to be occupying that land, although this is not evident.

Figure 30: Example of land title from Community 2



115 RGC (2001) *Land Law 2001, Articles 16, 18 & 43.*

116 RGC (2001) *Land Law 2001, Article 16.*

CURRENT TENURE STATUS

The data gathered during this survey is not detailed enough to make definitive assessments of each family's tenure situation, however, the following general observations can be made:

OWNERSHIP

Within the community only two households have received land titles. In the areas adjacent to the community there are a number of large houses and large vacant plots of land which have reportedly all been titled. Although it may be the case that those houses on the banks of the canal are deemed to be on state public property, the reason why the other households were excluded from the registration process is less clear.

LEGAL POSSESSION

As discussed above, the reason why the community was not titled is not clear, although SLR in the area did coincide with the eviction notice to the community in 2010. According to the Land Law, however, those residents that do not live on state public land may have claims to the land as legal possessors. This depends on whether possession of the land commenced prior to the passing of the 2001 Land Law, and is contingent on their occupation meeting five further basic criteria.

The background information gathered during the survey shows that more than 50% of the residents have lived in the area since before the Land Law was passed (the cut-off point for legal possession). Those who came after this date could also have legitimate claims as legal possessors if they can prove the previous owner(s) acquired the land prior to the Land Law being passed. As explained earlier, if the land immediately adjacent to the canal is found to be state public land, no possession of that land is legal.

OFFICIAL RECOGNITION OF OCCUPATION

Only two households within the community held full ownership titles. The remainder of the residents only have documents from local level authorities. Of these households the strongest document held is recognition of occupancy signed by the commune or village, although many people have since lost these documents. Around half of residents have a land transfer contract that was witnessed by commune or village authorities.

While these documents suggest that community members had the approval of local authorities to occupy the land, these documents are not evidence of ownership, and may only be used as supporting evidence if households do attempt to claim ownership of the land. The documents would, in particular, help to support a claim of legal possession as they indicate that the occupants' possession was unambiguous, notorious and in good faith. However, it is illegal for any local authority to issue documents that authorise the occupation of state public land, and if it is found that the land in question is state public land, these documents are not valid.

LINK TO CIRCULAR

As in the case of Community 1, this community provides an interesting example of the complexities of implementing the Circular in Phnom Penh. It is not clear why the community was excluded from SLR, and several large landholders in the area reportedly received land titles.

The community is well established and at least 50% of residents can prove occupation or a chain of possession starting prior to the Land Law. So, provided the land they are occupying is not state public property, they may have claims as legal possessors. If so, they are not illegal occupants and should not be subject to the Circular 03.

As with Community 1, this case presents a case where the stage of the Circular concerned with identification, mapping and classification of land could be complex. There are no legal documents that are publicly available that explain clearly the legal status of land adjacent to canals, and if they are state public property.

SUMMARY

- Around half of residents live along the canal, while the other half live at the end of roads 97 and 99.
- Those living on the canal are likely to be deemed to be, at least partly, on state public property. However, there are no clear laws or guidance on demarcating the banks of canals as state public property. As such the status of households along the canal is not clear, although a case may be made for considering the banks of canals state public property.
- It is not clear why the community, particularly the households not located by the canal, were excluded from SLR.
- Those who do not live on state public property may have claims to their land, and at least 50% have resided there since before the Land Law was passed.
- It is beyond the scope of this study to assess the potential tenure status of each individual household, but some general observations can be made:
 - There are two households with land titles in the community;
 - Most residents did have recognition from local authorities but many people have since lost this;
 - Around half have a land sale contract witnessed by local authorities;
 - The remainder hold unwitnessed sale contracts;
 - On the whole the community has fairly weak documentation issued at the lowest administrative level.



Figure 31: Canal edge households in Community 2

ALTERNATIVE PLAN

The above legal analysis of the status of the land in Community 2 raises several question marks regarding the legal status of the occupants. As such, it is not evident that the Circular should be applied to the community, or if it was applied, exactly which households are located on state public land and hence subject to the Circular, and which are not. What is however obvious is that the community is living in inadequate housing in unsanitary conditions and that the lack of a concrete embankment for the canal means the community is at risk of flooding during the rainy season. As such, a case for on-site upgrading can be made regardless of the legal status of the individual households' land parcels, although any land owners in the community would have to be compensated for the loss of land in accordance with the Law on Expropriation as part of the upgrading.

Figure 32 shows a possible on-site upgrading plan for all the households in the community, featuring a total of 85 plots. The plan acknowledges the public value in extending roads 97 and 99 south to the canal, and building an uninhabited embankment for the canal. Nine plots sized 4x16m and 76 plots sized 4x12m are located in several complexes, mainly on land that is currently privately owned but unoccupied. In order to implement the plan, the land would have to be purchased from its private owners.

The plan highlights the need for an approach wider than C03 in order to improve the housing conditions of the urban poor. If implemented following adjudication of land rights with meaningful community participation, both potentially legal and illegal households could benefit from improved housing conditions.



3.7 SUMMARY OF SITUATION IN PHNOM PENH

Phnom Penh represents a complex environment for C03 implementation. The city's current position as Cambodia's leading urban centre has created multifaceted pressures on land, from rural, economic migrants seeking shelter, to large local and international businesses looking for prime real estate. In a context where private interests drive urbanisation, the rights and needs of the poor are often disregarded or even trampled. Circular 03 represents an opportunity for increased attention on a neglected part of the city's population, with potential positive results including formalisation of poor settlements, tenure security, and improved housing conditions. However, given the history and current political climate in the city, Circular 03 implementation also raises a number of concerns. The two case studies of communities in Phnom Penh show how determination of urban poor households' possession rights can be complex, and highlight the need for careful identification, mapping and classification of state land and individual property rights in conjunction with C03 implementation.

The following sections highlight these opportunities as well as concerns and challenges before we provide concluding remarks and recommendations for C03 implementation in Phnom Penh.

OPPORTUNITIES

- Rights for households on state public land

Although official data is not available, there are undoubtedly hundreds, if not thousands, of households in Phnom Penh living on state public land. Circular 03 fills a gap in the legal framework on land by adding procedures through which these households should be dealt with. Prior to the Circular, this type of households had no legal recourse. Unfortunately, many households may be hesitant to engage with the process, as evocation of Circular implementation may be seen to imply acceptance of illegality prior to adjudication.

- Formalisation of communities

Urban poor settlements in Phnom Penh have thus far been either neglected by or excluded from on-going land registration and land titling schemes. As such, the Circular's focus on adjudicating and formalising these settlements is welcome. Insecure tenure has negative psychological effects on families and often prevents long-term planning and investment, such as in improved shelter and home environment. Lack of title also tends to equal lack of access to formal credit, which in turn makes poor households vulnerable to private moneylenders (who often charge exorbitant interest rates such as 7% per month) in cases of emergency. As such, commitment to the formalisation of poor settlements – whether through on-site upgrading or relocation – could have wide-ranging positive impacts for the city's poor.

- Multi-stakeholder approach

A multi-stakeholder approach to issues surrounding the impacts of urbanisation on Phnom Penh's poor currently does not exist. This is however at the heart of the Circular, and as such the Circular could be used to instigate dialogue on issues related to the urban poor. UN-Habitat's potential partnership with the MPP in the coming years could prove a positive starting point for dialogue, similarly to GIZ presence in Battambang Municipality. However, given the challenging environment represented by the capital, UN-Habitat has a delicate and difficult task ahead in bringing all relevant stakeholders together for frank and meaningful dialogue.

- Better interventions for the urban poor

Mapping and enumeration of poor settlements forms a key part of Circular implementation. Such data collection – provided data is made publicly accessible – can be extremely useful for a variety of stakeholders. For the settlements themselves, clear maps and data can support joint planning for the future, the establishment of communities where these do not exist, and more informed participation in development interventions. Other stakeholders, including the government, development partners, and civil society actors, can use the data to design interventions that better serve the needs and desires of the urban poor. *The Phnom Penh Urban Poor Assessment*, though limited in its scope, represents a good starting point for this.

- Registration and titling of land in excluded areas

LASSP has already committed itself to the registration of excluded areas as well as the avoidance of exclusions in the future. This is a positive commitment, which combined with the additional focus on poor settlements provided by the Circular could lead to comprehensive registration and titling of lands, whether state or private, in excluded areas. The Circular can also be used as a tool in this process, should specific households in excluded areas be found to be located on state public land. Significantly, however, wholesale C03 implementation in excluded areas should be avoided, to ensure no household with possession rights is targeted by the Circular.

- On-site upgrading

Compared to on-site upgrading, relocation of poor settlements is widely understood to have both high economic and extensive social costs. On-site upgrading as one of the resolutions identified in the Circular is therefore a positive step towards more sustainable, and more cost-effective, practices in dealing with poor settlements. While upgrading is only one of three identified resolutions, there exists a significant opportunity in the promotion of on-site upgrading as the primary solution for settlements.

- Existing community organising and capacity-building

Many urban poor settlements in Phnom Penh are organised into communities and have access to capacity-building opportunities, mainly through NGOs. These communities are therefore likely to have the capacity to engage with authorities and civil society on issues related to their tenure security. While further training is undoubtedly needed, existing community-level organisation and networking is a positive asset for inclusive implementation of C03 in the future.

- Variety of tenure

Article 5 of the Circular identifies a variety of forms for achieving secure tenure, including usufruct rights, ownership rights and rental rights. This variety of options is welcome, as it adds to the available resolutions for targeted settlements and opens up possibilities for creative solutions for individual households living on state public land. For example, households located within the railways right-of-way in Phnom Penh could be given either time-bound usufruct rights or lease-contracts to their land, thus securing their tenure until the land is needed for further development of the railways.

CONCERNS AND CHALLENGES

- Unilateral implementation to date

So far, implementation of C03 in Phnom Penh appears to have taken place in a unilateral manner. This undermines one of the most positive aspects of the Circular, namely its multi-stakeholder approach, which the Battambang experience shows is a key element not only of successful C03 implementation, but also of building trust and promoting dialogue across different stakeholders more generally. Lack of a multi-stakeholder approach may also increase distrust between the authorities, communities, and civil society actors, particularly if C03 implementation is not conducted in a transparent fashion, as appears to be the case thus far.

- Hostility towards civil society

The municipal authorities are suspicious, if not outright hostile, towards both civil society organisations and donor agencies. This is well exemplified by posts on the MPP’s website, which accuse NGOs of manipulating communities,¹¹⁷ inciting people,¹¹⁸ as well as being ignorant, chauvinistic and contemptuous towards Cambodian authorities.¹¹⁹ It is hence difficult to see a meaningful multi-stakeholder approach taking root in Phnom Penh. Although positive relationships between the authorities and the community can be seen as most significant in successful C03 implementation, civil society actors can play important roles in empowering communities and facilitating frank dialogue. It is therefore a concern that, for example, in Sen Sok, the authorities have set up a committee consisting mainly of local authorities, a few community members, but no civil society representatives.

- Previous experience

The history of unsuccessful interventions on behalf of Phnom Penh’s urban poor in the past gives little hope that this time will be different. Promises of on-site upgrades have not been delivered upon, while relocation to ‘liveable communities’ outside the city have amounted to little more than forced evictions into poverty. Without the kind of political will and commitment expressed by Battambang Municipality – particularly in the form of the de facto moratorium on evictions – it seems unlikely the Circular implementation beneficial for the capital’s urban poor will ever get underway.

- Limited capacity

Successful C03 implementation relies on skilful application of processes and procedures at the level of local authorities. In Battambang, lack of capacity at the commune level in particular has been identified as a challenge. On the other hand, GIZ presence at the Municipality level is credited with having strengthened the capacity of municipal authorities to deal with issues related to land. The resistance towards cooperation with outside agencies displayed by the MPP may hamper successful C03 implementation as well as lead to incorrect implementation as a result of low capacity among officials.

- On-going evictions and eviction threats

Despite the approval of the Circular in May 2010, at least 30 communities have since received eviction notices; households from a dozen of these have already been evicted. This number includes communities in locations identified for C03 implementation. On-going evictions or threats thereof indicate a lack of political will on the part of the authorities to appropriately assess the rights of the urban poor. The case of the families evicted from along the canal in Meanchey district also indicates lack of incentives to compensate families living on state public land in a manner that does not leave them destitute. This behaviour on the part of the authorities creates an environment of fear and suspicion, which may keep communities from engaging in C03 processes, regardless of their ultimate aim.

- Incorrect implementation

Given on-going evictions and unilateral implementation thus far, a key concern is that the Circular is not, and will not, be implemented properly in Phnom Penh. As noted in the detailed analysis earlier in the report, there is a lack of clarity regarding many provisions in the Circular. In Phnom Penh, where political will to recognise the rights of the urban poor manifestly does not exist and land is considered a zero-sum game, the Circular’s lack of clarity is likely to play against the urban poor. The experience from Battambang shows that implementing the Circular in a way that benefits urban poor settlements demands political will and a multi-stakeholder approach, as well as time-commitment and resources from all parties involved

117 MPP (2012) *Trapeang Anh Chanh Buon village: Is Ms. Ros Bopha, a victim of NGO’s manipulation?* May 2, 2012.

118 MPP (2012). *Get the Facts Straight and the Truth Undistorted.* June 2, 2012.

119 MPP (2012) *Will NGOs, Foreigners and Extremist “human rights” Advocates, and Loud-Mouth “Champions for Democracy” Leave all the Women in the Cold?* June 19, 2012.

– local authorities, NGOs, and the communities concerned. Neither of these two factors exists in Phnom Penh and several departures from the processes outlined in the Circular can already be identified, including limited information-sharing and consultation with target communities, as exemplified by households in target areas being unaware of having been identified for C03 implementation.

- Excluded areas and mixed rights

Although official data is not available, there are presumed to be several areas that have been excluded from SLR in Phnom Penh. There are significant concerns that the Circular will be implemented in these areas, even though the areas were excluded from SLR on account of being ‘difficult’ or ‘complicated’, not on account of being illegal. As such, while C03 may be applicable to some households in these areas, in order to ensure that no households with legal possession rights are subjected to C03 implementation, state land identification and mapping following existing mechanisms and definitions as already set out in existing law, i.e. the 2001 Land Law, Sub-decree N°118 and Prakas N°42, is required prior to or concomitant with C03 implementation.

The challenge of ensuring that only households clearly living on state public land are subjected to the Circular is exemplified by the area between the Tonle Sap river and National Road 5 (see Figure 33). Many of the settlements identified for C03 implementation by the MPP are located in this area. As is evident from the map however, households in the area may have differing legal claims to their land; while households immediately on the roadside and riverbank may be located on state public land,¹²⁰ households located in the centre of the strip – i.e. the majority of the households – have strong claims to the land. The two case studies included in this report also outline the different claims households in the same settlements can legally make. To ensure no households with legal possession rights are targeted by the Circular and thus denied their rights, public and transparent state land mapping and registration prior to or concomitant with C03 implementation is required, yet it is not clear this is forthcoming.



Figure 33: Satellite image of area between National Road 5 and the Tonle Sap

120 RGC(2005) N°118 ANK/BK, Sub-decree on State Land Management, Article 4.

- Biased nature of the Circular

The area between National Road 5 and the Tonle Sap river may also be used as an example of the biased nature of the Circular, in the sense that it appears to target only poor settlements, not all private structures, on state public land. In addition to several poor settlements, the strip is also home to Cambodia Television Network (CTN), Cambodia Beverage Company, and recently a large hotel was built on land between the river and the national road. Despite being located on pieces of real estate similar to those of the targeted communities, the companies are unlikely to come under scrutiny regarding their land rights.

- 10 year rule

The provision of ownership to people who live on or use land granted through on-site upgrading or resettlement is a positive step. However, the required 10 years of continuous occupation is lengthy. It is also in contrast to the Sub-Decree on Social Land Concessions (SLC), according to which, beneficiaries of SLCs must reside on land for five years before they qualify for land titles. Similarly, at many relocation sites in Phnom Penh, residents have been told they will qualify for titles after five years of continuous occupation.

Stakeholders in the implementation of the Circular in Battambang have expressed confusion regarding the required length of continuous occupation in order to qualify for titles. Several of those interviewed stated that they believed the number of years' continuous occupation may be variable depending on context. In the Garden Project in Battambang, the initial 'land certificates' received by households secure tenure to the plots, but prohibit transfer of plots or use of them as collateral against loans. After five years, the households will be given a new land certificate, which allows plots to be used as collateral but continues to prohibit transfer. Actual titles to the land will only be distributed after ten years of continuous occupancy.

While the rationale for not immediately titling relocation sites is sound, and the provision of new land certificates that can be used as collateral after five years is welcome, ten years remains a long time for poor households to wait for full titles. It also increases the costs of implementing the Circular by requiring regular monitoring of land use for a decade.

- Existing land use plans overriding poor settlements' rights

As the two case studies show, it can be very difficult to determine the legal status of a particular plot. In Community 1 for instance, almost 50% of the residents may have legal possession rights, while the rest most likely do not on the basis that they are located on or over the adjacent lake during the dry season. However, the private lake development surrounding the community confuses the issue of the legal status of the land. It is not clear if the land has been re-classified or not, and what implications this has for the community surveyed. On the one hand, if the lake has been re-classified from state public to state private land, this could strengthen the residents' claims to their plots. On the other, given the AZ Town plan for the area, the community could fall under the category of land for which there is already a land use plan under Step 2 of the Circular, leading to households being denied their possession rights.

- Lack of grievance mechanism

Over the past several years, several communities under threat of eviction in Phnom Penh have attempted to lodge complaints with the courts or the Cadastral Commission. In the majority of these cases, the courts have either refused to receive the complaints (e.g. in the case of Boeung Kak lake), or ignored complaints while families have been evicted (e.g. in the case of Group 78). The reliance on negotiating solutions combined with the lack of a distinct grievance mechanism under the Circular and a judiciary that is widely acknowledged not to be independent, could lead to a situation where individual households or even whole communities are strong-armed into 'resolutions' they do not agree with. Indeed, it has been observed in several communities in Phnom Penh that households have been pressured into dismantling their own homes following threats of outright demolition.

- Relocation

The Circular stipulates that basic public infrastructure and services are to be provided at new sites whether these follow on-site upgrading or relocation. Specifically, the Circular outlines a need for advance preparation of roads, water supply, sewage, as well as healthcare and education service, and possibly employment opportunities. This is a positive step towards better relocation practices that do not leave affected households worse off. However, it is not a substitute for a comprehensive relocation policy, which outlines participatory steps to be taken before, during, and after relocation to ensure a successful move. To date, relocation in Phnom Penh has proved extremely challenging, with affected households even in better-resourced relocations ending up in severe debt.¹²¹ It is therefore imperative that the notes on relocation provided by the Circular are taken as first steps only, to be expanded upon and developed into a resettlement plan for each affected community.

- Other solutions

It is not clear what the third type of resolution refers to, although it may be presumed it alludes to monetary compensation. The extensive academic discourse and documented practices on relocation clearly stress that monetary compensation alone is not a recipe for successful relocation. As can be seen in the case of Prek Barang, sums between US\$1,500 and US\$6,000 were given to households whose homes had been demolished. Given real estate prices in Phnom Penh, these types of sums are far less than needed to purchase land and build a home in the capital area, meaning affected households are likely to become renters in other poor settlements, as happened to many of those from Boeung Kak lake who accepted (the significantly higher) compensation of US\$8,500.

- Renters

Renters are largely excluded from the remit of the Circular. The only reference to renters comes under article 4.2, which states that ‘renters shall find a solution with the owners of the illegal settlements and have no right to demand any compensation’. This lack of provisions for improving the situation of renters in the city, who are often even more marginalised than those with individual plots of land, is a significant limitation of the Circular. Given the lack of affordable and adequate rental housing in the city, the lack of distinct policies to improve the situation of renters could lead to more people seeking shelter on state public land and other vacant lands in the city.

- A Circular is low in the Cambodian legal hierarchy

While the Circular represents both challenges and opportunities, the document’s low legal ranking may make its opportunities harder to capitalise upon. The Asian Development Bank is currently providing technical assistance to develop a sub-decree on informal settlements which will ‘set out clearly rights and responsibilities of those affected as well as those responsible for land acquisition and at the same time provide a legal basis for provision of assistance to informal settlers.’¹²² While this could represent an opportunity to strengthen the positive provisions of the Circular, clarify certain issues, and make its provisions legally-binding, many stakeholders are concerned that the sub-decree is being prepared without wider consultation. In the legal hierarchy, a sub-decree sits above a circular, and could therefore render the Circular obsolete if the two documents are not harmonised.

121 Sahmakum Teang Tnaut (2012) *Losing the Plot: Rapid Assessment of Household Debt in Trapeang Anhchanh*.

122 Asian Development Bank (2011) *TA 7566-REG: Strengthening and Use of Country Safeguard Systems CAM: Preparation of Draft Sub Decree on Informal Settlers*. August 2011.

- Lack of transparency overall

There is no publicly accessible database for either SLR or state lands. Without this information, it is not possible to independently evaluate a particular household's claim to a plot, as evidenced in the legal analysis of land in Communities 1 and 2. Thus, should the Circular be implemented in for instance Community 1, without access to a state land database in particular, it would not be possible to verify the authorities' claims with regards to the status of the land. As such, the lack of transparency in the land sector in general may negatively impact on Circular implementation in Phnom Penh, as well as elsewhere.

- Community representation

Participation of the community throughout the C03 process, and especially in the SLWGs is an excellent opportunity to ensure that community voices are raised and that important information can be adequately disseminated to the community. However, as there are a number of instances of community representatives being self-appointed, chosen by the authorities, or in some case, co-opted, it is essential that the community representatives have the support and confidence of the communities they represent. This can be ensured and monitored by the SLWG communicating and sharing information with community committees and civil society groups, as well as community members more broadly.

Figure 34: Poor communities have been excluded from land titling despite robust possession rights



CONCLUSION

4

Despite its brevity, the implications of Circular 03 in Cambodia's contentious land sector are complex. The above analysis shows that the document itself is flawed, primarily as a result of a lack of specificity and clear linkages to the existing legal framework, as well as limited details of how many of the steps outlined in the Circular, such as community and civil society participation, should be conducted. As such, the instrument contains potential loopholes that could lead to problems in implementation.

Nevertheless, Circular 03 presents real opportunities. It can be used as a potential tool for the formalising of illegal settlements and promotion of the right to adequate housing, thus contributing to the Cambodian government's long term goals of poverty reduction. But there are also significant challenges. In particular, given the experience of the past two decades, there are legitimate concerns about the Circular being used as an instrument to cement the image of the urban poor as illegal, in turn enabling their eviction. Based on the experience in Battambang, pro-poor political will is the foremost element to positive implementation. As we have seen, however, such will appears to be lacking in Phnom Penh; the risks of C03 implementation in the capital may hence outweigh the benefits at the present time, at least until the environment is more suited for its application.

Proponents of the Circular argue that such fears are unfounded: if the authorities want to evict a settlement, they can do so without the Circular. In this view, the Circular is a tool with which to engage local authorities regarding the lack of tenure security for the urban poor, and allow donors and civil society an insight into procedures to formalise settlements. Fundamentally, it can allow for currently illegal settlements to become legal.

This type of argumentation misses the point. The fundamental question with regards to C03 is whether it is an effective and efficient tool to secure tenure for households living on state public land, and whether its implementation can have any 'side-effects' – positive or negative – on the thousands of urban poor households with legal rights to their land. Findings of this report indicate that the Circular is to date failing in securing tenure for those it has targeted, although implementation in Battambang shows potential signs of success in the future.

In Phnom Penh, on the other hand, it may be that implementation of the Circular has allowed for land occupied by poor settlements in at least Meanchey and Chamkarmon districts to be declared state land without following due process as outlined in the Circular and the existing legal framework. If this has taken place, targeted settlements in these two districts may face increased tenure insecurity.

That is not to say that positive C03 implementation is impossible in the city. There are opportunities that can be capitalised upon, which could benefit not only households living on state land but also the urban poor generally, regardless of their legal status. As with so many other laws and policies in Cambodia, the ultimate impacts of Circular 03 lie in its implementation; political commitment to implement the Circular in a pro-poor fashion could genuinely improve the situation of the urban poor by encouraging dialogue and promoting the right to adequate housing.

Below are several key commitments, which if adopted by the Phnom Penh Municipality would at least in part allow for these opportunities to be capitalised upon:

- Commitment by the authorities to conduct the initial data collection process of temporary settlements in an open and transparent way, engaging affected communities and civil society organisations, and make information gathered publicly accessible and open for public comment. Should this already have been completed (as the MPP website implies) information should be made publicly accessible and open for public comment.
- Commitment to an open, multi-stakeholder process throughout the implementation of the Circular, including clarification of steps already taken.
- Commitment to ensure that all identification of state land is done in accordance with existing mechanisms and definitions as already set out in existing law, i.e. the 2001 Land Law, Sub-decree N°118 and Prakas N°42, and that no households with legal possession rights are subjected to C03 implementation.
- Commitment to facilitate and support the MLMUPC to the complete of registration of all private lands identified during C03 implementation through extension of land registration and titling into these areas.
- Clarification that settlements will not be identified as illegal if they lie in the path of development projects, even if these are already approved in existing land-use maps. The basis for identifying a settlement, or individual household within a settlement, as legal or illegal must be based on the existing legal process and definitions of state land.
- Clarification that onsite upgrading is the preferred option, given the costs associated with relocation and monetary compensation (both for the households affected and society at large). If on-site upgrading is not possible, commitment to developing relocation plans and sites in accordance with international standards.
- Commitment to use the Circular as an opportunity to strengthen tenure security and improve the living standards of the urban poor, thus finally delivering upon the Prime Minister's 2003 promise to upgrade 100 settlements per year. Information contained in the Municipality's *Urban Poor Assessment* could be used as a starting point for this.
- A moratorium on evictions from state land pending implementation of the Circular.

Unfortunately, few seem to think the above commitments are forthcoming. While UN-Habitat is keen to work with the Municipality, the agency is committing itself to a 'technical' and 'neutral' approach in working with the MPP, meaning it will refrain from involvement in political dynamics despite the fact that it is precisely the political dynamics that need to be transformed to pave the way for successful C03 implementation. As such, it is questionable what real impact UN-Habitat will have on on-going C03 implementation in the city, although the agency's intervention could have longer-term positive effects through its presence at the MPP.

4.1 RECOMMENDATIONS

The recommendations below are directed at key stakeholders in C03 implementation and the Cambodian land sector more generally. They aim to provide the stakeholders with insights into how to ensure C03 implementation leads to positive outcomes for the urban poor.

MUNICIPALITY OF PHNOM PENH (MPP)

- Make details about C03 implementation and all non-sensitive data gathered to date publicly accessible and open to comment.
- Issue an open invitation to civil society actors in Phnom Penh to engage in implementation of the Circular, as outlined in the document, and engage in continuing, open dialogue with all stakeholders regarding implementation.
- Conduct extensive awareness-raising about the Circular at the community level. Ensure that the nature of this awareness raising is accessible and understandable to the targeted beneficiaries.
- Implement the Circular in all instances where households are located on state public land, prioritising on-site upgrading as a resolution.
- Ensure that when resettlement is necessary, all necessary steps are taken to provide adequate resettlement conditions, in line with the Circular and international human rights obligations.
- Develop initiatives to ensure tenure security and improve livelihoods of legal possessors not targeted by the Circular.
- Release details of any land concessions and land use plans in Phnom Penh that may infringe upon existing residents rights.

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- Make details about SLR publicly accessible, including community-level information on where registration has been conducted, which areas registration will be conducted in, and which areas have been excluded.
- Commit to state land identification and mapping in urban areas prior to or in conjunction with C03 implementation.
- Commit to registration and titling of all private lands identified in urban poor settlements.
- Support government efforts to develop a relocation policy following international best practices, including the UN Basic Principles and Guidelines on Development-Induced Displacement and Evictions, that outlines participatory measures to be taken before, during, and after relocation and resettlement.
- Develop a national housing policy to address the housing needs of low income urban residents, including renters.
- Together with sub-national actors, develop a grievance mechanism specifically for C03 implementation

DEVELOPMENT PARTNERS

- Seek assurances from government partners that state land identification and mapping following existing law and mechanisms is conducted prior to or concomitant with C03 implementation, to safeguard against households with possession rights being subjected to the Circular

- Develop a C03 monitoring framework that takes into account not only the impacts of C03 implementation in specific settlements, but also lack of C03 implementation in applicable cases in order to assess its efficiency as a tool to secure tenure for the urban poor. Make the results of the monitoring publicly accessible.
- Promote upgrading as the foremost of the 'solutions' identified for households found to be located on state public land, and encourage use of alternative tenure security arrangements where land titles are not a possible solution. Encourage avoidance of monetary compensation as a sole resolution as it alone does not constitute a successful long-term solution for poor households.
- The Asian Development Bank should release the draft Sub-decree on Informal Settlements at the earliest convenience and commit to meaningful public consultations as a key part of its work on the Sub-decree.
- Make any engagement on the Circular contingent upon full transparency regarding the Circular process and all non-sensitive data being publicly accessible.
- As part of elimination of areas excluded from systematic land titling (following Germany's milestones), seek assurances and verification from government partners that C03 is implemented only in areas identified as state public land (following existing legal mechanisms).
- Encourage the RGC to make details of SLR publicly available, including which areas have been registered/titled, which are due to be so, and which areas have been excluded. This could be achieved through the development of a public database.
- Work with the RGC to develop a relocation policy as well as relocation plans for targeted communities/households prior to any relocation under the Circular. The policy and plans should outline steps to be taken before, during, and after relocation and resettlement in accordance with international best practice.
- Make resources available for awareness-raising and capacity-building at the community level to ensure communities affected by the Circular are able to play an informed role and demand due process.
- Make resources available for capacity-building of local authorities regarding C03 implementation.
- Commit to programming with a wider urban poor focus that also includes interventions to secure tenure and improve living standards of poor urban residents with possession rights.
- Seek assurances from government partners that the Circular is implemented at the household as opposed to the community level to ensure that individual assessments of land rights are made, and only households without possession rights are subjected to the Circular.
- Encourage the development of an appeal mechanism as part of C03 implementation to avoid delays and allow for prompt response to complaints.
- Encourage the RGC to clarify how tenure is secured for households undergoing C03 implementation during the 10-year period before land titles are granted
- Seek assurances from government partners that existing land use plans are not used to declare households illegal settlers. As Germany moves ahead in supporting spatial planning in Cambodia, GIZ could play an important role in encouraging transparency and compliance with existing law.
- Work with the RGC to ensure C03 implementation proceeds in a timely fashion with tangible, positive results for targeted communities.

ANNEX 1: STATE PUBLIC PROPERTIES

Public state land has a public interest use and falls within one of the following specific types of property having a public interest use (adapted from Sub-decree N°118 on State Land Management Article 4):

<p>a) Property having a natural origin, such as</p> <ul style="list-style-type: none"> (1) Forests (2) Courses of navigable or floatable water (3) Natural lakes (4) Banks of navigable or floatable rivers (5) Seashores 	<p>b) Property developed for general public use, such as</p> <ul style="list-style-type: none"> (1) Quays (2) Ports (3) Railways (4) Railway stations (5) Airports
<p>c) Property made available in its natural state or specifically developed for public use, such as</p> <ul style="list-style-type: none"> (1) Roads (2) Tracks (3) Oxcart ways (4) Pathways (5) Gardens and public parks (6) Reserved land 	<p>d) Property allocated to render a public service, such as</p> <ul style="list-style-type: none"> (1) Public schools or educational buildings (2) Administrative buildings (3) Public hospitals
<p>e) Natural reserves protected by law</p>	<p>f) Archeological, cultural and historical patrimonies</p>
<p>g) Royal properties that are not the private properties of the Royal Family</p>	<p>h) Other land having public interest use characteristics and determined legal basis.</p>

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