

Developing Torrens title in Cambodia

Earlier this year I was invited to travel to Cambodia to assist the Land Legislation Implementation Project in Cambodia, by providing introductory training to judges, prosecutors and trainers in Cambodian land law, and, as part of that training, to conduct seminars in Torrens title based on the provisions of the Land Act (NT). The invitation to go to Cambodia came from Colin McDonald QC, a director of the Cambodian Legal Resources Development Centre, a non-profit organisation which is committed to the promotion and development of Cambodian legal resources and the rule of law in Cambodia. The team leader of the project is Patricia Baars, an American lawyer working and living in Phnom Penh. She is ably assisted by Matthew Rendall, an Australian lawyer, who is also a permanent resident of Cambodia. Both Ms Baars and Mr Rendall are co-directors of the Cambodian Legal Resources Development Centre. The funds for the trip were provided through East West Management Institute and the Asian Development Bank.

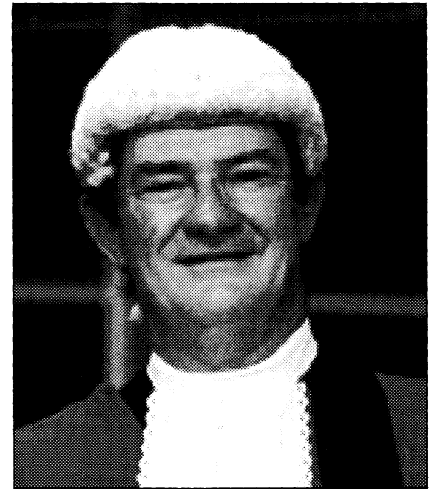
Cambodian land law has had a turbulent history since French colonial government of Indo-China ceased in the 1950s. Prior to 1975, Cambodian land law was based on French law, with the relevant provisions contained in the Civil Code of 1920. During the period 1975-1989, private ownership of land was prohibited and records relating thereto were destroyed. In 1992 a new land law was introduced which permitted the private ownership of land in residential areas. This provided for a recordation system of land registration. The 1992 law, in general, restated principles found in the previous Cambodian Civil Code.

In 1993 Cambodia adopted a new constitution, and it was considered necessary to enact a new land law because of significant problems which existed with the implementation of the 1992 law. After a number of drafts had been considered, the new land law

came into force on 30 August 2001. The Land Law 2001 contains a number of features which are to be found in most Torrens title systems, including a system of land registration based upon accurate cadastral surveys, a system of registration of instruments dealing with interests in land, provisions dealing with indefeasibility of title and state guarantee of title.

Cambodia is also in the process of revising its Civil Code, which deals with, inter alia, property law and contract law. A draft is being prepared by a Japanese team, the Japan International Co-operation Agency, Legal and Judicial Co-operation Project. This team has interpreted the Land Law 2001 as establishing a land recordation system and the draft Civil Code has been prepared on that basis.

My role was to explain the way in which the Torrens system works in Australia, and to see to what extent the Land Law 2001 implemented a system of land registration with indefeasibility of title, rather than a recordation system. This had to be kept at a fairly basic level, for much of the audience was not legally trained. Beginning on Monday, 23 June 2003, at the Royal School for Judges and Prosecutors, Phnom Penh, I conducted a seminar involving judges, judge trainers and lawyers, followed by an afternoon workshop conducted by Matthew Rendall in which I participated. This seminar contained a detailed explanation of the Land Title Act (NT). I was greatly assisted by a PowerPoint presentation prepared by Robert Bradshaw and Caroline Heske from the Department of Justice, which formed the basis of this seminar. The seminar was well attended and I had the opportunity to meet a number of VIPs, including a director of the Asian Development Bank, Mr Urooj Malik; the Director of the Royal School, Ms Kim Sathavy; His Excellency Sum Manit, the Secretary of State Office of the Council of Ministers; Mr Winston McColgan, Chargé d'Affaires from the European Union; Judge Michael Bonniaw from



Justice Dean Mildren RFD

the School of Magistrates in Bordeaux, as well as many others too numerous to name individually. The questions from the floor indicated a level of sophistication beyond what I had been told to expect.

On Tuesday, 24 June 2003, I conducted a half-day seminar to the officers from the Cadastral Administration, which is supervised by the Ministry of Land Management, Urban Planning and Construction. The Cadastral Administration runs the equivalent of our Lands Titles Office. This was a much smaller seminar and was more focused on the administration of a lands title registration system. I presented copies of documents (such as title documents) in former and present use in the Lands Titles Office. As I was not sure before I departed Australia, whether the new system was to be a paper system or electronic system, I brought samples of both systems. Subsequently, I visited the Cadastral Administration and was shown the records relating to the old 1992 recordation system, as well as the records relating to the new (and very impressive) electronic 2001 registration system. These records showed how land was brought under the new registration system, the survey process and the steps leading to the issue of a certificate of title.

On Thursday morning, 26 June 2003, I presented a third seminar, this time to private law firms, both local and international, to members of the non-government organisations community,

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and some participants who had attended one or other of the first two seminars.

Amongst the many important Cambodian officials who attended the seminars was Mr Sek Setha, the Director General of Cadastre and Geography (who occupies a similar office to that of the Registrar General in our system); his Deputy, Mr Lim Voan; and Mr So Vanna the Deputy Director, Technical Department of the General Department of Cadastre and Geography.

On Thursday evening I attended at the University of Phnom Penh, where I was met by the Dean of the Faculty of Law and Economics, Mr Yuok Ngoy, and one of the senior lecturers Mr Nick Rine (from the University of Michigan). I gave a 1-hour lecture to a small group of law students.

I departed Phnom Penh on Friday, 27

June 2003, to return to Australia via Kuala Lumpur. Whilst there, my wife and I had only a small amount of time to do any sightseeing, but we did have the opportunity to visit some of the tourist spots in the city and to take a cruise on the river, organised by Pat Baars and Matthew Rendall.

The trip was apparently a success – or so I have been told – and I understand a further invitation to conduct more detailed seminars may be forthcoming in 2004.

I would like to thank the Attorney General and the Chief Justice for their support in making this trip. I was able to make gifts of Australian textbooks on land law to our Cambodian friends, paid for out of the court's budget. This was clearly much appreciated, as textbooks of this kind are hard to acquire in this country.