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The Cambodian peasantry and the formalisation of land rights

Historical overview and current issues

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Disclaimer

This research report received financial support from the “Land Tenure and Development” Technical Committee on the French Cooperation (CTFD), through the “Land policy formulation support” project, funded by the French Development Agency (AFD).

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- Guiding policy choices and contributing to international debates through the production of common analysis framework and resources (training tools, country factsheets, summary papers, etc.),
- Supporting strategic land policy actors at different level in a various of countries and continents.

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CITATION: Diepart J.-C., Sem T. (2018). Cambodian peasantry and formalisation of land right: Historical perspectives and current issues. Research series. Paris, French Technical Committee on Land Tenure and Development (AFD-MEAE).



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LIST OF ABBREVIATIONS

ADB	Asian Development Bank
ADHOC	Cambodian Human Rights and Development Association
ASEAN	Association of Southeast Asian Nations
CB-NRM	Community-Based Natural Resources Management
CFi	Community Fisheries
CFo	Community Forestry
CLT	Communal Land Title
CPA	Community Protected Area
CPP	Cambodian People's Party
CPR	Common Pool Resources
DK	Democratic Kampuchea
ELC	Economic Land Concession
FUNCIPEC	Front uni national pour un cambodge indépendant, neutre, pacifique et coopératif
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
IMF	International Monetary Fund
KHR	Khmer Riel (currency)
KR	Khmer Rouge
LA-SSP	Land Administration Sub-Sector Program
LMAP	Land Management and Administration Project
LWD	Life With Dignity
MAFF	Ministry of Agriculture, Forestry and Fisheries
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MLVT	Ministry of Labor and Vocational Training
MoE	Ministry of Environment
MoP	Ministry of Planning
MRLG	Mekong Region Land Governance
NGO	Non-Governmental Organization
NIS	National Institute of Statistics
ODC	Open Development Cambodia
PA	Protected Area
PM	Prime Minister
PRK	People's Republic of Kampuchea
SCW	Save Cambodia's Wildlife
SLC	Social Land Concession
SLR	Systematic Land Registration
USD	US Dollar
WB	World Bank
WFP	World Food Program

Preface to the second edition

A first version of this working paper was published in 2015 by GRAESE (Research Group on East and Southeast Asia), an interdisciplinary team consisting of researchers from the Center of Development Studies (UC Louvain), the Unit of Economy and Rural Development (U Liège, Gembloux Agro-Bio Tech) and the Centre for Interdisciplinary Research on Rural Development (CIRRD), Hanoi University of Agriculture.

Since 2015, however, the Cambodian land sector has changed: the formalisation of land rights has gone further, new reforms are now on the agenda and some Ministries have received new land management responsibilities. Even if the central argument and trends identified in the first edition remain relevant in 2018, the Cambodia land reform follows novel pathways. The objective of this second edition is to update the picture we drew in 2015 with the latest figures and information available to us. Working on a second iteration of the manuscript was also an opportunity to polish the document and correct a few errors left in the first edition.

But our general intention remains the same. We conceive this document as a resource for students and researchers aiming to understand Cambodian land issues and their historical background.

Acknowledgments

This working paper is part of a research project supported partly by the French Technical Committee on Land Tenure and Development (CTFD) of the AFD (French Development Agency) and MEAE (French Ministry of Europe and Foreign Affairs). We are very appreciative of these organisations for their support.

We are also very grateful to David Dupuis who made insightful comments on an earlier draft. For their careful revisions and encouragements, we also thank Poch Sophorn and the late Franz-Volker Müller. George Copper very generously provided useful reflections, comments and documents all along the writing process. We extend profound thanks to Marie Mellac who conducted a thorough review of the document and provided very useful comments to produce its second edition.

The update of the database needed to produce the second edition was conducted in conjunction with the Mekong Region Land Governance project (MRLG) and the Center for Development and Environment (CDE) of the University of Bern and particularly the 'State of Land in the Mekong Region' report they co-published.

INTRODUCTION

The majority of the Cambodian population are involved in managing land and natural resources. This makes land the single most important productive and social asset supporting development. Therefore, land tenure regimes governing the access, use and control of land resources are central to the relationship between people and their environment. They engage actors and institutions in complex relationships that are usually transcended by power and conflict. So understanding the nature and impact of land rights is an important endeavour of development studies.

In Cambodian history, land reforms have been at the centre of successive modernisation projects that have tried to subordinate the peasantry to the State and/or to markets. So in order to understand the role and the place of peasants in contemporary land reform, it is important to examine how they have gone through previous reforms. The central objective of this working paper is to examine the recognition and formalisation of peasants' land rights against the backdrop of Cambodian history and political economy of land and agrarian change. In other words, we aim to understand how colonialism, war, socialism and the regional integration against a neoliberal background have shaped the land rights of smallholder farmers in contemporary Cambodia.

Our working definition of property includes the entire bundle of rights to access, use, transfer and control of land. But rights are not limited to statutory laws and procedures. Our understanding of 'rights' translates what Ribot and Peluso (2005) call 'the ability to benefit from land'. The expression 'land rights' accurately reflects our notion of land access, following Lavigne Delville (2018) who suggest that 'land rights' define socially recognized modes of access to land and natural resources within a given political community, that are enforced by its authorities. So the question of securing land rights needs to be considered as a political process rather than as a purely technical or legal matter (Mellac and Castellanet 2015).

We scrutinise land rights formalisation processes at the scale of the national territory by differentiating between lowland central plains and peripheral upland areas. The lowland rice plain is situated in the central area of Cambodia where most of the population is concentrated. It includes residential and agricultural land areas around the Tonle Sap floodplain and in the Mekong alluvial plain. The upland areas are peripheral to these central plains; they have a higher elevation and a more hilly relief. They are predominantly covered with forest although over the past few years deforestation has been significant. Settlement structure is less dense here than it is in the central plains. The upland agricultural systems consist mostly of annual or perennial non-rice crops although rice is also cultivated on land that is relatively lower (in depressions, along river banks, and so on).

This working paper is a synthesis of published and unpublished materials but it is also based on original analyses. In addition to a review of the literature and archival documents (Forestry Administration 2008), the study draws on secondary data sources relevant to land tenure regimes which have been collected and updated on a regular basis since 2002. Relevant data from different sources was integrated into a Geographic Information System to render the information and the findings spatially explicit. Original maps are provided on a large range of topics to articulate the analysis of land issues in lowland and upland areas.

Our lines of argumentation are essentially geographical. We first suggest that legal rules and operational tools of land reform have been spatially differentiated between the lowland central plain and the peripheral uplands and have yielded contradictory and problematic results. In the

lowland areas, we show the historical continuity for peasants to acquire land ‘by the plough’ and to seek land security of tenure predominantly through recognition of possession rights legitimised by local authorities through local institutions. We contrast these consistent trends with past and current attempts to modernise land property rights through land titling and the promotion of land markets. We argue that land titling has not radically changed the security of tenure in the central plains and suggest that the uncontrolled recourse to the market for land transactions has disembedded land from its social fabric. In the upland areas, land reforms have been implemented mostly in a context of post-war political economy fuelled by the extraction of natural resources. The allocation of forest concessions and later of agro-industrial concessions by the State has overwritten local land management rules and institutions and has considerably undermined the security of peasants in respect of their land tenure. A central shortcoming of the current land reforms lies in their failure to articulate the processes of land rights formalisation in lowland and upland areas, although both regions are closely linked through land-driven migration movements that have contributed to a massive redistribution of the Cambodian population.

The outline of this working paper is as follows. We first set out the framework by presenting the endogenous logic of territorial management by Cambodian rural communities. We then turn to a genealogy of land tenure regimes in Cambodia from pre-colonial time until the 1990s. Against this background, we present the contemporary land issues and the nature of the land rights formalisation processes at play under the current land reforms. We then examine the processes of differentiation in access to land that are at stake in the central plains and discuss the market-based distributive land reform that is being promoted in this area. In the following section, we show how land poverty in the central plains has initiated large migration movements to the peripheral uplands. In light of these migrations, we further examine how the government has been managing peripheral upland areas through a number of State land management initiatives to which Economic Land Concessions (ELCs) and the Order 01 land titling scheme are central.



I. THE ENDOGENOUS LOGIC OF TERRITORIAL MANAGEMENT

In this section, we identify and discuss key land tenure institutions that have been a traditional norm for rural communities in Cambodia, and that are still visible today. These institutions have remained consistent throughout history and remain pivotal in contemporary rural Cambodia. We suggest that they are the building blocks of an endogenous form of territorial management in Cambodian rural communities.

1. LAND ACQUISITION 'BY THE PLOUGH'

According to traditional Khmer rural codes, the king is the owner of land and water (*Macha Teuk Dey*) in the country and its farmers are users. The right to land access and use could be claimed by clearing, settling on the land and actually cultivating it. This practice is commonly known as acquisition 'by the plough'. As long as it does not infringe on the rights of others in the community, the cultivation of a piece of land, for subsistence farming, provides farmers with individual possession rights (Olivier 1954; Thion 1993; Guillou 2006). In Cambodia, possession (*paukeas*) is indicated by a bundle of rights that include access, use, claim, transmission and exclusion that are implemented by a village authority. If a farmer stops cultivating his plot of land for five consecutive years¹ he loses his *de facto* possession rights to the plot, which then becomes available for another farmer with the consent of the village chief.

In a context in which demographic pressure on land was low and the country was endowed with a large land 'reserve', this regime of land appropriation allowed farmers an important freedom of movement over the territory (Aymonier 1904; Greve 1993). As long as the village chief consents, it also allowed them to prefer agrarian expansion (as opposed to intensification) to ensure the increase of agricultural production. Today the principle that the possession of land depends on its uncontested use is still clearly perceptible in most peasant communities.

Across the country, territories have been organised into three zones: the urban centre (kampong), the rice hinterlands (srae) and the forest (prey) (Chandler 1998). Placed under the control of the district authority (chovay srok²), the kampong was where administrative, political and economic powers merged within the patronal elite. The rice hinterlands (srae) comprised villages linked to the kampong for commercial exchanges, the collection of rice taxes, religious festivals and use by officials looking for military recruits. Rice growing villages were arranged irregularly with houses scattered randomly, reflecting the loose social structure of Khmer villages. This is corroborated by Ebihara (1984) who argues that already in the sixteenth century in Cambodia, there were very few collective or communitarian entities organising rural communities. The villages of the prey (forest) had little contact with the kampong, but were very important in the exploitation of forest resources, in grazing and as reserves of agricultural land. They were frequently raided for slaves (Chandler 1998).

1 In art 725 of the 1920 civil code, this period was 5 years. In Art 77 of the 1992 land law, it was 3 years.

2 The term *srok* refers literally to district but the expression *chovay srok* is used in an even wider context to refer to district, province or even commune authorities.

2. MULTI-FUNCTIONALITY OF THE COMMONS

Rice production is the core activity in Cambodian peasant production systems but it is integrated into a larger portfolio of activities, most notably the collection and management of common-pool natural resources. Multifunctional landscapes are present in most rural communities but can be best observed in the Tonle Sap floodplain, a rich aquatic ecological system, and in upland riparian forests rich in timber and non-timber resources.

The Tonle Sap floodplain is characterised by a mosaic of diverse land uses ranging from rice cultivation (at the edge of the plain), grasslands used for grazing cattle, and shrubland where a variety of non-timber forest products are harvested (Evans *et al.* 2005; Diepart 2007b; Roberts 2011). This diversity of land use is maintained through a variety of practices such as burning, ploughing, fallowing, or grazing with the objective of ensuring a flexible and diverse supply of crucial natural products for local livelihoods, while at the same time maintaining agro-ecosystem fertility (Diepart 2007a; 2007c). The system is rational. The different rice cropping systems are adapted for different water depths and encompass important aquatic biodiversity (Balzer and Balzer 2002). The grass is crucial as fodder for the cattle that generate a significant part of the farming income portfolio, and the shrubs are also important for the energy supply of households (i.e. as firewood). Fishing in the ponds of the receding floodplain is part and parcel of this management, which aims to maintain multi-functional agro-ecosystems. The resource base is not open access, *sensu* Garrett Hardin (1968), but it has been under active management in a context of low population pressure which has facilitated the reproduction of land fertility and has reduced the risk of conflicts between resource users.



In riparian villages forests have a central role in peasant production systems (Srey *et al.* 2008) and are multifunctional. They provide a high diversity of timber and non-timber products (including wax, bamboo, medicinal plants and wild vegetables that are important for subsistence or direct sale). Some of these products are essential elements of the Cambodian diet, .e.g. fish contributes more than 70 percent to the overall protein intake of the people (Ahmed 1998). Interstice land is used as grazing land for cattle, which are traditionally a key component of local production systems for income, for traction in rice cultivation, for savings and for the production of manure.

The management of common-pool resources by the peasantry is exemplified in diversification patterns and risk coping mechanisms that enable them to make sustainable use of limited resources and to reduce the risk to their livelihoods that is associated with their reliance on a limited number of products. In this sense, peasant communities contribute to the maintenance of biodiversity and perform an environmental function in their landscape (Diepart 2007a). Additionally, the combination of activities associated with commons management creates an important territorial value-added (Hansen and Neth 2006; Van Acker 2010; Diepart 2010). Because these activities mobilise an important part of the labour force (usually underemployed during the dry season), the multifunctional management of the commons serves as a central element of household labour management.

3. DECISION-MAKING AND CONFLICT RESOLUTION IN PEASANT COMMUNITIES

In Khmer rural communities the central decision-making institution in land and natural resources is the household and this is not traditionally controlled by a superior community-based organisation. The local economy results primarily from strategic decisions made by households who try to maximise their interests. More precisely, it is the coordination of household-level decision-making processes that determines the management of the commons. Conceiving land management as the social relations of production negotiated between households allows the community to adapt with great flexibility to a series of parameters that evolve across different temporal and spatial scales with agrarian/household production systems. These include demographic differentiation, availability and seasonal variation of resources, access to markets and processing. The maintenance of a mosaic of land use suggests an explicit recognition of the heterogeneity of household strategies. Given the importance of the commons for the subsistence of peasantries, the diversification of land occupation can be seen as a collective strategy to secure the means of subsistence for entire communities.

Decisions relating to land and resource management are socially negotiated between households and are influenced by two important institutions or norms that are constitutive elements of the historical governance in Cambodian peasant communities. First, social relations are traditionally based on a form of trust linked to the moral obligations between a patron and a client. These norms constitute key social bonds in rural communities (Ledgerwood and Vijghen 2002). Patronage encompasses a consistent hierarchical social structure characterised by a flexible set of dyadic relationships extending down from the king and his administration to the village. Such arrangements that form patron-client relationships have been a continuous and central element of the Khmer social fabric throughout history and remain a key social organising factor in contemporary Cambodia. Patronage is exercised and produced in specific spheres of power including political-administrative (dominated by local authorities), and economic networks structured around those who control the provision of agricultural inputs, the commercialisation of output and the access to credit. The intervention of development agencies should also be considered as a new sphere of patronage in Cambodian villages (Ledgerwood and Vijghen 2002). In reality, these patronage networks are all entangled, and the inter-dependence of households

within these multi-faceted patronage networks is the norm across the Cambodian countryside. From a peasant perspective, patrons are dominant. They direct activity and provide certain forms of social and physical security. Nevertheless, these traditional patronage networks are being challenged and transformed under the pressure of political power and the liberalisation of the economy. This is resulting in very weak links and trust between the communities and the public.

Another important feature of collective action (and conflict resolution) is the associations created and structured around the pagoda. These associations are usually transitory and are meant only to address a specific need or problem in the community across a wide range of social endeavours (education, ceremonies, public work, credit, and so on). Even if these associations are not directly involved in land and natural resource management, they constitute social arenas or platforms where community dialogue is instituted. These social networks develop slowly and decisions are taken by consensus. Nevertheless, they have the ability, resources and competence to gather the stakeholders and entrust dialogue for collective action (Pellini 2007; Diepart 2007a; Aschmoneit 1998). These associations are fragile because they are easily influenced by politics or economics but they can be constructive in mediation and conflict management. They definitively represent a form of peasant historic governance that ensures collective security.

II. A GENEALOGY OF LAND TENURE REGIMES

The historical turbulence that accompanied the rise and fall of political regimes severely affected the development of land tenure regimes in Cambodia. The following section is a genealogy that aims to put current land reform in a wider historical perspective.

1. PRECOLONIAL ERA: ACQUISITION ‘BY THE PLOUGH’

In pre-colonial times, very low population pressure did not generate any need for strong regulation in respect of the use of land. There were no cadastral records that maintained information about landholders, land use and land values (Thion 1993).

Between the Angkorian period and the arrival of the French in Cambodia, the Sovereign King theoretically held absolute political and administrative power. He embodied the State in the name of *deva-raja* (god-king), a cosmological interpretation that elevated the king to guardian of the peace and protector of the land and harmony between people and divinities (Greve 1993). However, the actual exercise of power was closely linked to the *oknyas* (high-ranking officials) who were personally assigned by the king. The most influential among these *oknyas* were the five king ministers and the *chovay srok* – provincial or district governors. The *chovay srok* rarely acted collectively but rather as individuals, responding to local interests and personal arrangements. Their prerogatives were not based on well-defined administrative functions but were exercised in an expedient fashion that was appropriate to the governance of a particular territory (Chandler 1998).

In order to place rice production and labour under the effective control of the State, a royal tax of 10 percent was levied on it. The *chovay srok* were authorised to collect taxes in their jurisdiction, from which they could also mobilise labour for warfare or public works. Access to manpower and rice meant that in practice the *chovay srok* controlled the balance of power in the kingdom (Rungswasdisab 1995).

2. MODERNISATION OF THE LAND TENURE REGIME DURING THE FRENCH PROTECTORATE (1863-1953)

The notion of private land ownership and the modernisation of communal land property rights were introduced under French colonial administration in a move to stimulate rice production, secure land of interest to the French and allow urban investment from the *kampong* (urban center). The French introduced land titles and a department of cadastre to oversee both technical instruments and administrative procedures in land registration (Guillou 2006; Thion 1993).

The modernisation of land property rights introduced at that time consisted of a change from a possession right (*paukeas*) to an ownership right (*kamaset*). The difference is subtle but significant. Possession suggests that the right to use the land is attached to certain conditions including continuous presence and utilisation of the land. In contrast, ownership rights are definitive. They do not force the owner of the land to cultivate in order to claim full property rights on it. The transformation of possession to ownership rights rests on the premise that ownership rights give more security and incentive to farmers and investors to use the land more efficiently. In principle, the transformation of possession to ownership rights marks the complete commodification of land: that is, its alienation from the social fabric in which it is embedded (Polanyi 1957).

Land registration and titling implemented by the French administration consisted of two consecutive steps which followed distinct procedures and involved different categories of actors:

- ▷ The registration of land as fixed asset (equivalent to a possession - *paukeas* - certificate) was based on peaceful occupation of a plot of land that had lasted for at least five years. The fixed asset registration required technical measures and registration in a land book and the procedure was overseen by the commune chief (*me khum*) who acted as the certifying officer.
- ▷ On that basis, the land title and transfer of the ownership right could be delivered, but this procedure required a written property transfer document and registration from the cadastral office.

In practice, however, the difference between possession and ownership was not clear because farmers usually had full land tenure security on account of local recognition of the possession (by other peasants and the *me khum*). In fact, the fuzzy distinction between possession and private ownership rights, which is responsible for so many contemporary land difficulties, is not new.

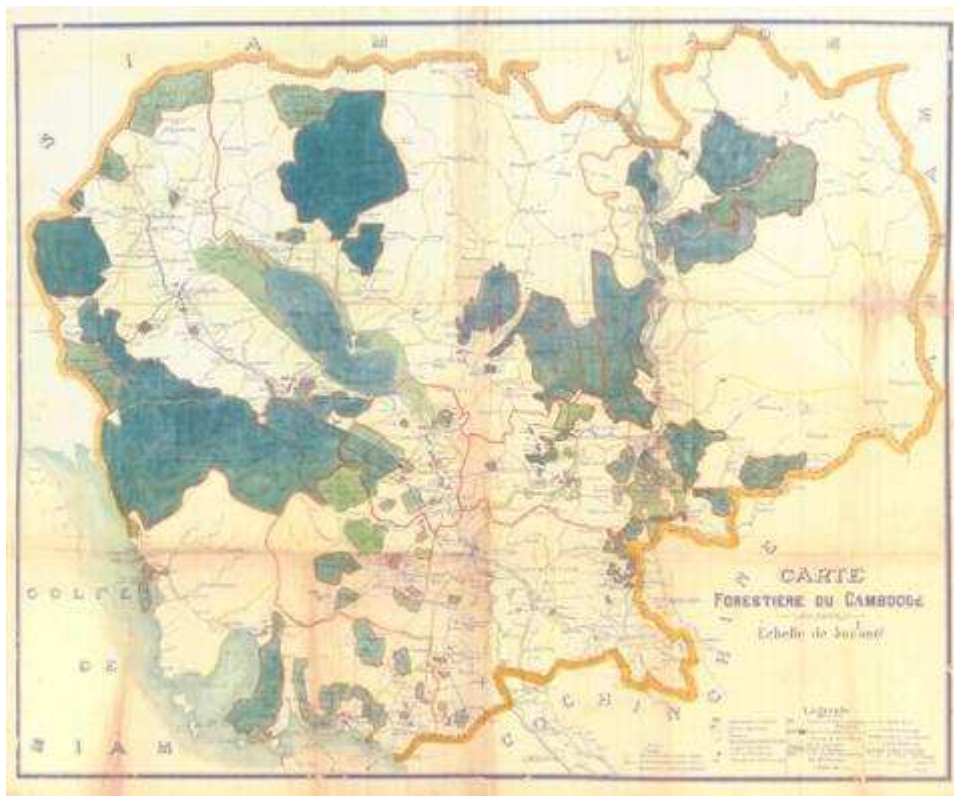
Thion (1993) explains that the establishment of the new land rights institutions in Cambodia did not proceed smoothly but was accompanied by resistance on the part of the local elite (controlled and supervised by the French administration) and on the part of the Cambodian peasants because it formed new accountability relationships with a distant cadastral administration disconnected from their social fabric. This mistrust explains why the delivery of possession certification (in the form of fixed asset certificates) covered a large area of the country (90 percent) whereas only a small proportion (10 percent) of the land was effectively titled. Everywhere else, however, the claim of land right through occupation ('acquisition by the plough') continued as the norm. Ultimately, the introduction of land titling by the French reinforced the role of the commune chief (*me khum*) in certifying land occupancy and in providing land security for the people.

In liberalising land markets and favouring access to land for French and urban investors from the *kampong*, the administration tried to increase the exchange value of land in order to transfer it to the most productive farmers. A new tax system was instituted, which obliged the peasants to pay a certain percentage of their production in cash. Peasants were compelled to engage in the market economy by selling part of their production. This cash economy created usury credit systems (usurers secured preferential conditions at very low interest rates with the bank of the *kampong*) and resulted in widespread indebtedness among peasants (Thion 1993). Combined with the development of land markets, indebtedness led to land dispossession through mortgage or sale and the emergence of landlessness, the land lease and the creation of agricultural wage labour (Kiernan and Boua 1982).

French intervention in Cambodia also resulted in a gradual modernisation of administrative mechanisms in the forestry sector. In 1899, the French army provided Cambodia with a rudimentary forest administration, placed under the forest service of Cochinchina (Kampuchea Krom, currently Southern Vietnam including the Mekong delta). The French army corps, a large consumer of timber at that time, organised the first exploitation of teak (*tectona grandis*). The colony wanted to enrich its treasury by granting logging licences and levying sales taxes (Thomas 1999). This very liberal model of forest management was not well controlled and quickly resulted in massive forest degradation (Gouvernement Général d'Indochine 1905). To sustain colonial forest rents, the French administration initiated a system of forest reserves to allow for forest regeneration. Starting in 1902, logging activities were regulated within these State enclosures according to licences signed between French companies and the forest administration, the so-called 'exclusive logging privilege – privilèges exclusifs de coupe'. This was a clear attempt to

substitute small-scale indigenous forest use with large-scale entrepreneurial exploitation (Thomas 1999) and marks the beginning of the concession system in Cambodia. Cambodians were denied access to these forests (Gouvernement Général d'Indochine 1910) which also meant a drastic reduction of grazing herds. The rules and coercive measures that accompanied colonial forestry tended to spare the French entrepreneurs and impose repression on peasants and local authorities. Peasants chose passive resistance to these rules and tried to evade them by turning to smuggling routes controlled by village authorities and Thai or Vietnamese traders (Thomas 1999).

The setting up of forest reserves and the expansion of large land enclosures by urban investors who secured their land through the cadastral system established by the French had considerably reduced the possibility of land expansion. In fact, land access and land concentration associated with agrarian class formation were already serious issues in Cambodia in the early twentieth century. These agrarian dynamics were central to the analyses made by future Khmer Rouge leaders in their doctoral dissertations (Hou 1955; Khieu 1959; Hu 1965).



Map 1 – Forest reserves in Cambodia as of 1930 (Gouvernement général d'Indochine 1930)

(Note: forest reserves are dark areas)

3. POST-INDEPENDENCE AND THE PERSISTENCE OF FRENCH RULES (1953-1970)

King Norodom Sihanouk, the father of independence in 1953, abdicated in 1955 to take the post of prime minister of the young kingdom. His politics did not challenge land and forest tenure arrangements previously established by the French. Concessions (by and for national investors only) remained the principal forest management instrument and the titling of settlement and agricultural land was pursued. Land markets were still promoted and investment in the agricultural sector by urban dwellers was encouraged.

However, the Sihanouk administration could not reduce the growing inequalities initiated in the early part of the century. In the 1960s, the indebtedness of peasants and their dependency on usurers became important (Kiernan 2004). In 1962 (demographic census), 16 percent of agricultural households were landless (Thion 1993). The figure rose to 20 percent in 1970 (Kiernan and Boua 1982). This period was also characterised by the rise of land inequality in Cambodia and, in reality, the socio-economic conditions of peasants at the end of the 1960s were not essentially different from those that had prevailed in the 1920s and 1930s (Prud'homme 1969).

In his analysis, So (2009) notes that land continued to be claimed in three ways: ownership title, fixed asset registration, and simply by occupation. While the main growing areas were either registered under ownership or through fixed asset registration, land continued to be cleared, utilised, and claimed through the customary arrangements that existed prior to the introduction of the private property system. The continuation of customary land clearing and ownership through occupation, coupled with a modern system of property rights, caused conflicts when the government failed to protect those vulnerable groups who did not integrate into the modern property system. This problem was evident when a significant peasants' revolt took place in 1967 in Samlaut district, which lies in the north of the Cardamom Mountains. By manipulating the legal system, powerful government and military officials invalidated undocumented ownership of land that had been cleared by local villagers and obtained the land titles. The revolt was quelled through repression and many people who were involved took refuge in the forests where a small group of communist insurgents had started to organize (Thion 1993; Kiernan 1982).

The failure of rural credit schemes, along with the poorly run and unprofitable State-owned enterprises, left the Cambodian economy in bad shape. As the government's coffers were close to empty, liberalisation and foreign investments were seen as the means to revitalise the economy. But mounting economic grievances, injustice resulting from administrative corruption and the failure of the State to protect individual citizens from abuse by powerful people, did not allow the reform to take effect. In 1970, General Lon Nol took the chance to seize power, overthrow the monarchy and install a republican government. Lon Nol was backed by the US government in the context of the American intervention in Vietnam. The Indochina war completely destabilised the country, and destroyed livestock and main agricultural infrastructure. In exile, the king supported the Cambodian factions that resisted the republican government, among them the Khmer Rouge (KR), a group of communist revolutionaries who were piloting collectivised farming in the areas under their control.

4. THE DEMOCRATIC KAMPUCHEA EXPERIENCE AND THE IMPOSITION OF COLLECTIVISATION (1970-1975)

The modernisation project of Democratic Kampuchea (DK) was based on the construction of a nation-state, and its implementation between 1975 and 1979 was radical. The national priority was the development of the rice sector. The *Angkar* – the ruling body of the Khmer Rouge - abolished the right of individuals to possess land, nationalised the entire agricultural domain and

collectivised all means of production. Labour was organised within collective production groups to which individuals were recruited. The urban population were forced out to the countryside. Forest concessions were cancelled and access to forests was forbidden for the population who were now engaged in collective farming. Cadastral administration and land titling procedures were destroyed and brought to a complete stop. These new forms of appropriation of space and the underlying social relations radically transformed rural territories (Tyner 2008).

5. KROM SAMAKI AND THE COLLECTIVISATION OF THE PEASANTS (1979-1989)³

The Vietnamese intervention in Cambodia in late 1978 led to the collapse of Democratic Kampuchea rule in Cambodia and the beginning of resistance activity and fighting in the Northwest. The new government of the People's Republic of Kampuchea (PRK) was formed from old Khmer Rouge members who had escaped to Vietnam to avoid the purges of Pol Pot and had come back to Cambodia with the support of the Vietnamese government. The objectives and modalities of PRK land policy and reform were centred on two premises:

- ▷ There were immense structural constraints given the massive destruction of the country between 1970-1975 (in particular rural physical infrastructure), generalised food shortage and the lack of seeds, draught animals, irrigation water, agricultural equipment and technicians;
- ▷ There was political motivation by the new leaders of the PRK, backed by Vietnam, to implement the central policies of the PRK at local level and to motivate people according to central party interests.

The first months of 1979 witnessed chaos across the country. People who were displaced during the Democratic Kampuchea period migrated throughout the country in search of land, family and peace after so much brutality and upheaval. These movements are poorly understood but demographer Jacqueline Desbarat (1995) argues that it is plausible that a large majority of people were re-integrated within the villages they had occupied before 1975-1979. In the absence of any legal framework, *de facto* re-appropriation of animals and agricultural equipment that people owned in the 1960s took place (Frings 1997).

When the socio-political situation stabilised, a new unit of agricultural production, the *Krom Samaki* (namely Solidarity Group), was declared and recognised by the State as the main unit of rural development. The *Krom Samaki* engaged the country in a second wave of agricultural collectivisation. A *Krom Samaki* comprised a small group of 10-15 households who used the land, agricultural equipment and draught animals collectively. Agricultural land was the property of the State but it was distributed by *Krom Samaki* authorities to each family within the group according to the number of active labourers. General rules of distribution were dictated by the central party but implemented locally by the group chief. In practice this meant that, whereas the principles were supposed to be unequivocal, the interpretation of the rules was contingent on the discretion of the local authorities, and this gave rise to a number of divergences that contributed to the initiation of land differentiation as early as the 1980s:

3 This section was mostly researched and written as part of an MSc thesis conducted back in 2002 in Cambodia. In the thesis, the first author of this working paper examined the context and modalities of re-collectivisation and de-collectivisation of agriculture after the KR. In addition to an extensive literature review, it is based on a case study in Kampong Speu province (Diepart 2002).

- ▷ In principle, collectivisation applied to all means of production (draught animals and agricultural equipment), but due to the *de facto* re-appropriation of these in early 1979, the People's Republic of Kampuchea could not envisage the confiscation of what was already in the hands of the people; such a measure would have been too unpopular (Frings 1997). The families who could re-appropriate cattle received more land than those who could not because they could make productive use of more land than could families without cattle (one buffalo was equivalent to one full active labourer). As possession of a draught animal was already an important factor of differentiation in Cambodia during the 1960s, it is probable that the land distribution that took place through the *Krom Samaki* re-initiated some pre-war differentiation patterns.
- ▷ The area of land distributed to families depended on both the total land available in the village and on the total number of families. Migration movements played an important role here. Certain home-migration was more important in some villages than in others and this resulted in the ratio of land to people being sometimes very different from one village to another (even within the same commune). As there were no mechanisms of compensation between villages, landholding allocated to families could differ substantially. In some villages, the group chief anticipated this problem by keeping some land but these reserves were small in size.
- ▷ In principle, the commune and group chiefs in charge of the land distribution were elected by the population. They were residents of the area, basically peasants like everyone else who were also known to people through kinship, and as neighbours or acquaintances and were hence easy to approach (Ebihara 1968). In this context, favouritism in land distribution was frequent (Frings 1997). Field observations from Kampong Speu (Diepart 2002) and from Kampong Thom (Diepart 2007a) suggest that favouritism resulted in the land rent capture (land of better fertility) by families who were well-connected with the group or village chief.
- ▷ During the war, some land was abandoned and colonised by a secondary shrub vegetation regrowth. There were no specific rules to govern the distribution of this land (Frings 1993), so access to it was dependent on either the labour capacity and willingness of certain families to expand their agricultural landholdings, or on the privileged relationships certain families had with the group or village chief (Diepart 2002).

The agricultural activities were meant to be conducted collectively with equipment and draught animals that were either collectively owned (or privately owned but collectively shared with the group). The harvest was collected by the group chief and redistributed to people according to a system of labour-points which distinguished between the main labour force, auxiliary labour and people who were dependent (non-active). The group chief was in charge of recording the amount of labour everyone spent on production and redistributed the harvest according to this number. In areas with low production, a directive stipulated that households needed to show solidarity and distribute the harvest equally according to consumption needs. In these areas conflicts occurred when the chief behaved unfairly or when hard working families considered that they were working for the benefit of the lazy ones.

In a move to address these problems and to motivate the peasants, the theoretical model of *Krom Samaki* was reformed. Usufruct rights were given on some land to families and, from 1982, authorities recognised the differentiation of the *Krom Samaki* model and the existence of three levels within it:

- ▷ Level 1 was the collective organisation of the labour force by groups or teams (Frings 1993) in which farmland was collectively held and worked by a small group of families and the produce divided among the group or team members according to the labour each had provided.
- ▷ In level 2, labour was still organised collectively but the agricultural land was divided up into individually-held plots. A system of mutual aid allowed families to manage peak labour times without constraints. The mutual aid group was actually the re-emergence of a traditional form of mutual labour exchange in peasant communities (*provas day*). The group chief was responsible for organising the labour exchange between families.
- ▷ Level 3 was the least collectivised form of *Krom Samaki*. Draught animals and land were allocated to families as private assets and each family was allowed to manage its production individually. Solidarity was not absent but it was not formally organised by the authority of the group.

It is worth noting that the decision to distinguish three levels of *Krom Samaki* was not based on a plan by the central party but was a recognition of the actual situation on the ground at that time. The differentiation within the original model was contingent on factors such as the actual availability of equipment and draught animals, the ability to access markets (e.g. the proximity of trade centres) and the possibility to engage in commercial farming. Another important aspect was the local leadership, as some group chiefs tried to establish very collective structures whereas others were opposed to collectivisation and tried to minimise its importance.

Under these differentiation forces and the absence of a strong State to counter-balance them, *Krom Samaki* was dismantled *de facto* in the countryside in the eighties. The land allocation rule was that land previously allocated to each family within each *Krom Samaki* would be redistributed to them. But sometimes the land was redistributed according to numbers of people, and not according to numbers of active labourers. The draught animals and equipment that were previously appropriated remained with the same families and the collective equipment was redistributed to families according to the number of people or active members each family had. Because animals and equipment are not divisible, they were usually distributed to families with higher numbers of active labourers. As a consequence, the difference in land/labour ratios that prevailed during *Krom Samaki* was almost unchanged after the redistribution.

There is a large consensus among scholars in portraying the *Krom Samaki* as a complete failure (Frings 1993; So 2009). Their explanation for this is three-fold:

- ▷ Hard-working people lacked the incentive to continue, as the products of their labour were seized by lazier people;
- ▷ The People's Republic of Kampuchea lacked human resources to oversee and encourage collectivisation. It lacked skilful cadres convinced of the benefit of collective farming;
- ▷ The leaders of the People's Republic of Kampuchea were afraid of the political backlash from imposing strong penalties for non-compliance with collectivisation directives.

After the trauma of Democratic Kampuchea, there is little doubt that people were not willing to embark on a new collectivisation of agriculture. Also, the people's efforts in respect of national reconstruction by far outweighed the concrete support they received from the State (in forms such as seeds, fertilisers, tractor fuel and other necessities for agricultural development). And the forces of differentiation in the Cambodian countryside were so strong that a communist government, who had to face external and internal contestations and lacked competent cadres, could not actually address them.

However, as argued elsewhere (Diepart 2011, 2002), the contribution of *Krom Samaki* was far from insignificant. In a post-war context of generalised starvation, ruined agricultural infrastructure, uncontrolled migration movements and international isolation, the system allowed a quick recovery of agricultural production (Annex 1) in regions heavily destroyed by the war. Even if they were instruments of central party politics, the management of *Krom Samaki* were quite decentralised in their everyday routine work. This gave a great deal of flexibility to identify and adjust land tenure regimes that were socially acceptable and economically sound. This is undoubtedly an important dimension of land security. *Krom Samaki* were managed mostly by peasant-like authorities; they reflected a strong resilience on the part of peasant households and institutions; and they emphasised the superiority of family farming over collective modes of agricultural production

The termination of Soviet aid to Southeast Asian alliances in 1989 put a complete end to this system. Cambodia then embarked on a series of land rights reforms that laid the foundation for the current land reforms.

6. LIBERALISATION AND UNEQUAL ACCESS TO LAND (1989-2001)

Under the surveillance of the Bretton Woods organisations Cambodia then again engaged in an unprecedented set of reforms that radically changed the country's land tenure institutions. Whereas the World Bank recommended starting with economic reforms including macro-economic stabilisation through monetary and fiscal policies, price liberalisation and the privatisation of small and medium enterprises, Ljunggren (1993) shows that Cambodia actually started with land reforms.

In 1989, a number of new legal provisions relevant to land included amendments to the Constitution (Jennar 1995). Land remained the property of the State and no-one could claim rights to land acquired before 1979. All Cambodians now had the right to occupy, use and sell the land allocated to them by the State. Three types of land were defined: settlements (*lounneuvthan*), agricultural (*kasekam*) and concession (*sampathian*, covering more than 5 ha, for agro-industrial development). At this stage, there was a distinction between possession rights to agricultural and concession land, and ownership rights to residential land.

In order to synthesise all these new legal provisions, a Land Law was passed in 1992. This law confirmed that all land belonged to the State and that all Cambodians were entitled to possession rights (access, use, management, transmission and exclusion). But the rest of the law was confusing. While it strictly forbade the private ownership of agricultural land, at the same time it established the conditions for someone with a possession certificate to become the actual owner of the land. Van Acker argues that this law failed to synthesise the three main land tenure regimes inherited from history: acquisition 'by the plough'; State and private ownership promoted by the French; and the socialist ideology which prevailed in the 1970s to 1980s (Van Acker 1999).

In 1989, a procedure for so-called 'sporadic land registration' was put in place to register the agricultural land. This sporadic process involved a number of steps before land titles could be issued, a procedure that So (2009) summarises into two main stages. First, farming families who had received land plots for cultivation were required to submit applications for land possession rights to the cadastral office - a process that required prior verification by both the village and commune authorities. Second, cadastral officials actually visited the plots to conduct technical surveys and demarcations, after which the application was forwarded for approval by different relevant authorities (Lim 1998). This procedure, in two steps, resembles the one designed and implemented 70 years earlier under the French rule.

History seemed to repeat itself again as the transition to private ownership remained incomplete. From the 4.2 million applications for land titles received by the cadastral administration, only 448,678 (10 percent) were actually issued (Van Acker 1999). The complexity of the procedure and the clear lack of resources allocated by the State to endorse the implementation partially explains this backlog. But corruption associated with the procedure also excluded people from successfully completing the process. Officially, the registration of one plot cost USD 5, but the real cost incurred by the applicant could reach as much as USD 300 to 400. At each and every step in the procedure an extra payment was required by the under-paid staff in charge of the registration. This real cost was obviously prohibitive for an ordinary peasant, who usually decided to abandon the procedure when asked to pay the extra. Those who could afford registration were the well-connected people and the urban investors who became important actors in the land markets of the 1990s. The consequence of this procedure was, again, the dualisation of the land tenure regime between possession and ownership rights, socially recognised and approved locally by *me khum*, and full private ownership acquired through cadastral procedure. The distinction is very important as an ownership title can invalidate a possession certificate when a conflict goes to court (East-West Management Institute 2003). As the 2001 land law states in article 35, the courts may not refuse to order the removal of an occupant in favour of a person who presents a valid and complete cadastral title.

And in the context of emerging land markets and rising land value this distinction is significant. Land distribution in the 1990s was characterised by a rising inequality in terms of agricultural landholding size, taking place through the related processes of landlessness and land concentration.

Detailed and comprehensive data on the extent of landlessness and land concentration is not available, but estimates can be found from several surveys conducted in the 1990s: see Chan *et al.* (2001) for a synthesis. Each survey has its own sampling framework, so it is difficult to compare them and to gain a sense of the evolution of landlessness or land concentration. However, all surveys suggest that landlessness and land concentration increased in the 1990s (Sik 2000; Chan, Tep, and Acharya 2001).

The Landlessness and Development Investigation Tool survey (LADIT), conducted by the Oxfam Cambodian Land Study Project from 1999-2000, presents the most convincing approach to examine and understand landlessness and land concentration. Based on recall survey methods, LADIT suggests that the proportion of agricultural households who were landless dropped to 2.48 percent in 1984 before rising sharply to 12 percent in 1999 and further to a predicted 15 percent in 2001 (Biddulph 2000). The survey states that landlessness was highest among families headed by single women—21.2 percent on aggregate. Among the landless, 54.8 percent had never owned land, while the rest had lost it for one reason or another. For those who had never owned land the main reasons were reported as new marriage (42.3 percent), returnees (27.3 percent) and change of village (26.8 percent). Of those who had lost land, the main reasons for this were expenses due to illness (43.7 percent), lack of food (20.1 percent), expropriation (13 percent), indebtedness (4.6 percent), and natural disaster (3.4 percent). Other research on landlessness suggests similar results (Sik 2000; So *et al.* 2001; Diepart *et al.* 2006; Van Acker 1999).

Landlessness and land concentration are closely related to the emergence and rapid development of an active land market legitimised by the new economic reform agenda, namely economic liberalisation and privatisation. Land sales are usually driven by the socio-economic vulnerability of the household (distress sales). On the demand side, land purchases are triggered by three types of actors: the middle-farmers who accumulate capital in the agricultural and non-agricultural sectors and buy additional land from their fellow peasants; the emerging urban investors; and

wealthy migrants (Diepart 2011). In the absence of protective mechanisms that would prevent peasants from falling into over-indebtedness, the land market of the 1990s led to market-based dispossession and increasing landlessness in rural Cambodia.

The 1992 Land Law is sometimes portrayed as a ‘get rich quick’ manual for the upwardly mobile population (William 1999). But in most cases this law was not even applied. From 1993-1998 more than one third of Cambodian land fell outside the provisions of the 1992 Land Law, which was not explicit in respect of granting possible land concessions. In the prevailing post-war socio-economic context, the 1992 Land Law is highly problematic due to the convergence of several factors. The possibility of accessing land through markets and the increasing value of land, combined with the misuse of power, the incomplete and biased land titling services, and the absence of functioning land management institutions, set the stage for illicit land acquisition and the intensification of land conflicts. Anne Guillou shows that the possibilities offered by the 1992 Land Law considerably increased land conflicts most notably on State land because it was not properly defined and mapped and because the law did not offer a sufficiently strong juridical basis to resolve such disputes (Guillou 2006). As of 2002, George Cooper (2002) estimated that 200,000 poor Cambodians had fallen victim to on-going, as-yet-unresolved, cases of large-scale seizures.

7. NATURE CONSERVATION EFFORTS

In 1993, a royal decree for Protected Areas was issued to empower the Ministry of Environment to lead, manage, plan and develop a Protected Area system to preserve Cambodia’s land, forests, wildlife, wetlands and coastal zones (Royal Government of Cambodia 1993). Twenty-three areas were included in the decree covering a total of 3,289,000 ha (18 percent of Cambodia’s total national territory) including three RAMSAR sites (i.e. wetlands of international importance) signifying the global importance of Cambodian wetlands (Save Cambodia's Wildlife 2006). This decree distinguished four different types of protected natural areas: *Natural Parks* (areas of outstanding nature and scenic views to be protected for scientific, educational and entertainment purposes), *Wildlife Reserves* (natural areas to be preserved in their natural state in order to protect wildlife, vegetation and ecological balance), *Protected Scenic View Areas* (areas to be maintained as scenic views for pleasure and tourism) and *Multi-Purpose Areas* (areas necessary for the stability of water, forestry, wildlife, and fisheries resources, for pleasure, and for the conservation of nature with a view to ensuring economic development). A number of important fishing grounds were also designated as protected fish sanctuaries (24,173 ha) (Map 2).



8. RE-EMERGENCE OF A CONCESSION [POLITICAL] ECONOMY

When they were officially reintroduced as a central system for natural resources in the early 1990s, concessions were not new to Cambodia. Indeed, they had been introduced and implemented in the first half of the century under the French rule and even after independence. In the 1980s, concessions were in fact already implemented to finance war and resistance in the Northwest, where a significant group of migrants had gathered in refugee camps (along the Thai border). International aid was collected and distributed from these. The camps had key geopolitical influence in the region as they provided support (food aid, civil and military logistics) to political bodies (i.e. the Khmer Rouge) opposed to the Hanoi-backed Phnom Penh power. This support was significant and contributed to giving legitimacy to Khmer Rouge power. Vickery (2007) points out that Khmer Rouge leaders were even encouraged by UNTAC (the United Nations Transitional Authority in Cambodia) to present candidates for the 1993 general elections as part of a multipartite peace agreement for Cambodia. Additionally, the Cambodian People's Party, or the Royal Government, had integrated a splinter faction of the Khmer Rouge, which eventually led to the dissolution of the group, and to peace.

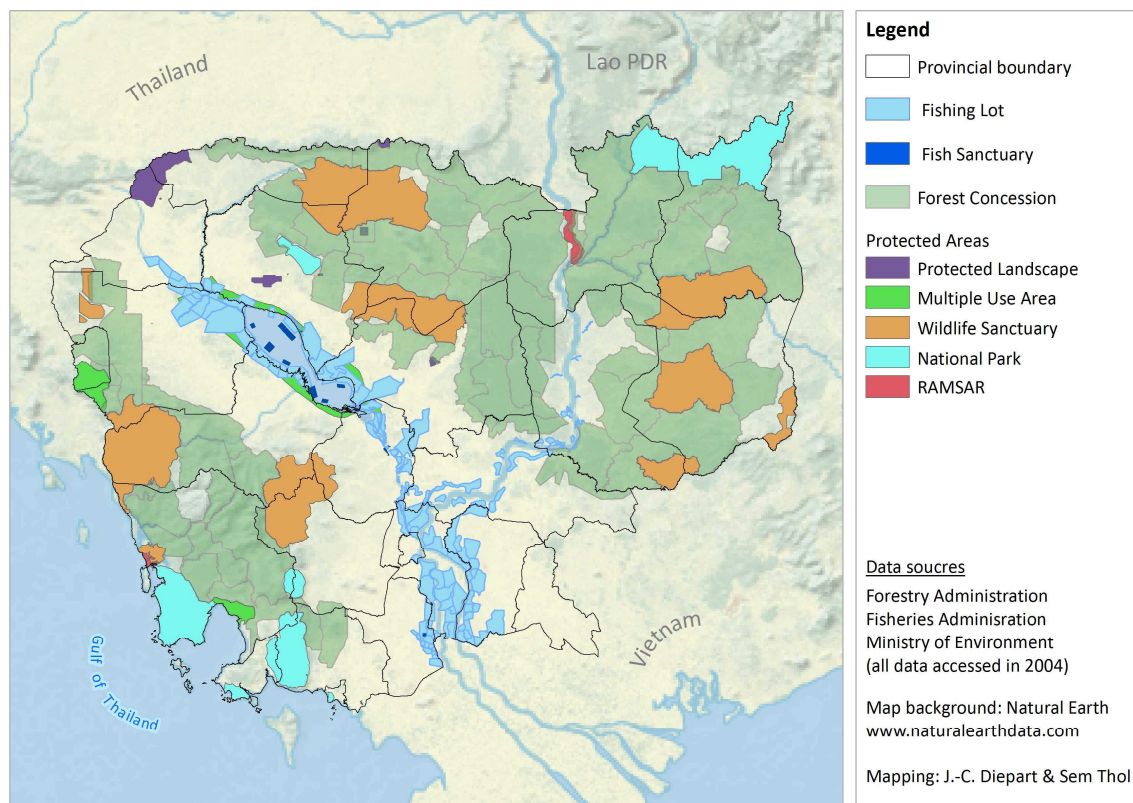
As early as 1979, agreements on forest exploitation were made between Khmer Rouge leaders and the Thai military in the Northwest. The deal was clear: in exchange for forest exploitation rights, the Thai military gave the Khmer Rouge access to food aid in the camps and protected their refugees (Le Billon 2000; Hibou 2004). Approximately 15 Thai companies that were subject to the logging ban prevailing in Thailand were granted access to large forest areas in the Northwestern territories controlled by the Khmer Rouge (Gottesman 2003). The profits derived from these agreements were tremendous and allowed the Khmer Rouge to finance their resistance war against government and Vietnamese troops. But these concessions also benefited the government via taxes and royalties. A paradoxical logic of cooperation between the KR and the national army led these players to maintain a minimum level of conflict and instability in order to maintain access to forest rent (Le Billon and Springer 2007). This deal considerably reinforced relations between Khmer Rouge leaders, some political factions within the government, the Thai military, and businesses and politicians on both sides of the border (Hibou 2004). It further reinforced the legitimacy of Khmer Rouge power in the Northwest.

It is on the basis of these first 'joint ventures' that forest concessions were [re]established in the mid-1980s, 100 years after they were first introduced in Cambodia by the French (Le Billon 2000; Hibou 2004). The international community, mostly the World Bank, encouraged the rationalisation of forest concessions with the objective of promoting public-private partnerships between State and private enterprises. To put an end to the prevailing anarchy in forest management, the idea was to introduce a 'transparent' concession system that would generate export revenues to finance post-war reconstruction efforts, enable sustainable management of forest eco-systems, but also to create and stimulate the diversification of the local economy activities (through private enterprises, e.g. sawmills and associated enterprises) in order to create value-added products from the timber sector and stimulate local employment (Hibou 2004). The concession system became the main tenure system for natural resources management in Cambodia during the 1990s.

But in the 1990s, the political context was one of post-war political struggles between factions of the new governmental coalition and the continued war with the KR in the Northwest. The 1993 elections brought to power a coalition of two parties: the Cambodian People's Party (the CPP that was politically opposed to the Khmer Rouge) and FUNCINPEC (Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique, et Coopératif), led by Norodom Rannaridh who attempted to integrate the Khmer Rouge into the government as a manoeuvre to weaken the

CPP within their coalition (Vickery 2007). The reconstruction of patronage networks to control the country generated violent political struggles. The need for both parties to generate revenue intensified the recourse to forest concessions. In just a few years, the public-private partnership ideal, created by the international community to assist reconstruction, resulted in a generalised and uncontrolled privatisation of State forests to serve the interests of political and military leaders (Global Witness 2007).

This context stimulated the auction of very large forest areas and fishing grounds through concessions (Map 2). Between 1994 and 2001, 39 percent of the national territory was allocated to forest concessions (51 areas totalling 7,084,215 hectares, covering more than half of the forest resources at that time (Save Cambodia's Wildlife 2006)). In the fisheries sector, the total area of the fishing concessions (fishing lots) that were auctioned was 953,740 hectares, representing 5.2 percent of the Cambodian national territory (McKenney and Prom 2002) (Map 2). The granting of agricultural concessions (palm oil, cassava, rubber and cashew) was also on the move but relatively less than concessions in the forest and fisheries sectors. As of 31 December 2001, the total area under agricultural concessions in Cambodia was 809,296 ha, leased to 40 companies (McKenney and Prom 2002).



Map 2 – Forest and fisheries concessions and Protected Areas as of the end of the 1990s

The development of a concession economy supported three important processes. First, in a move to offer alternative livelihood solutions for demobilised soldiers, both of the coalition's prime ministers allocated land to the army. In seven provinces, in July 1994, 5 percent of the Cambodian territory was allocated to the military (Hibou 2004; Global Witness 2007). This increased the

militarisation of natural resource management. Second, the power became progressively centralised and controlled by Hun Sen (the CPP prime minister) at the expense of opposition leaders and even of his rivals within the CPP. The army and police were placed progressively under his control. This resulted in a fusion of economic, political, military, judicial and even religious power at all levels (Marchal 2004). Third, the activities initiated by concessionaires promoted the development of a myriad entrepreneurial activities involving resource extraction at sub-national level. These entrepreneurs were usually sub-contractors of main concessionaires but they were also well connected to sub-national authorities.

In this context it is not surprising that the conception, implementation and control of concession activities often deviated from the normal procedures (McKenney and Prom 2002; Hibou 2004). First, the absence of properly allocated human and financial resources made it virtually impossible to control the activities of concessionaires on the ground. Second, concession contracts were usually conceived and written by businessmen and administrative staff, not by experts in forestry or in fisheries. These contracts did not include specific management measures that would allow for the regeneration of timber and non-timber species, fish stock and halieutic resources. Third, there was no independent judicial system that could have conducted proper arbitration of the many conflicts. Fourth, the exploitation of timber occurred not just within concession areas, but frequently outside, too. Fifth, the activities of the concessionaires often had serious social, economic and cultural consequences and often led to the dispossession and impoverishment of local populations, and sometimes gave rise to considerable conflict. Sixth, when the legal status of the concessions was not clear (partial operation, abandoned, terminated, and so on), local entrepreneurs and also peasants took advantage of this legal grey area to engage in anarchic logging.

To address these problems, donors proposed some adjustment to the system: i) a timber export ban; ii) the suppression of the system of logging permits that had been reintroduced in 1994; and iii) the termination of contracts when concessionaires failed to start operations for more than a year. However, as Béatrice Hibou indicates, these attempts to improve the system of concessions never really questioned its exclusionary nature: the perpetuation of illegal activities by concessionaires, and the capacity of the actors to find means to by-pass any hindrances to their activity, sustained an incomplete and corrupted system of forest management (Hibou 2004).

But the most pernicious effect of the concession system was what some scholars have called neo-patrimonialism. In Cambodia, neo-patrimonialism occurred through the use of national natural resources to serve the private interests of the elite and to consolidate their power through patronage-based distributive practices (Un and So 2009; Sok 2014; Milne 2013). The system can be schematically represented as in Figure 1. Un and So (2011) describe it primarily as patronage-based natural resource extraction and management. The discretionary granting of concession licences through auction and the effective exploitation of resources were facilitated through legal and illicit payments by concessionaires to the national elites (members of the CPP and the army). This revenue was used for the private enrichment of national elites. But when it was combined with contributions from government officials it generated revenues to fund patronage-based distributive politics via the provision of services and infrastructures in populated rural areas. In return, the people supported the government by vote through the electoral machine, which secured acceptable levels of domestic and international legitimacy for the CPP. Patronage-based natural resource extraction also served to cement the CPP's unity as it provided sources of income for party leaders and their clients. Given Cambodia's current political context of dominant party rule and weak and repressed civil society on the one hand, and the donor community's emphasis on political stability and aggregate economic growth on the other, the government will likely continue to resist any move that might lead to greater institutional independence, transparency

or accountability for agencies that are closely related to the property management regime (Un and So 2011).

In the 1990s, the revenue generated from timber exploitation was immense. Le Billon (2002) suggests that between 1989 and 2001 at least 10 million cubic metres of timber, representing a total value of USD 2.4 billion, was exported from Cambodia. But this generated only USD 120 million for the national treasury (Le Billon 2002). A significant fraction of the revenues generated was captured by provincial district authorities, members of the military and policemen, political party representatives and high-level civil servants (McKenney and Prom 2002). There was little incentive at sub-national level to actually put an end to the concession system. The strength of the system lay in its ability to give enough freedom and benefit to key sub-national actors so that no one really questioned it. In the end, this process was central to the consolidation of the whole political hierarchy of the ruling party from national down to village level.

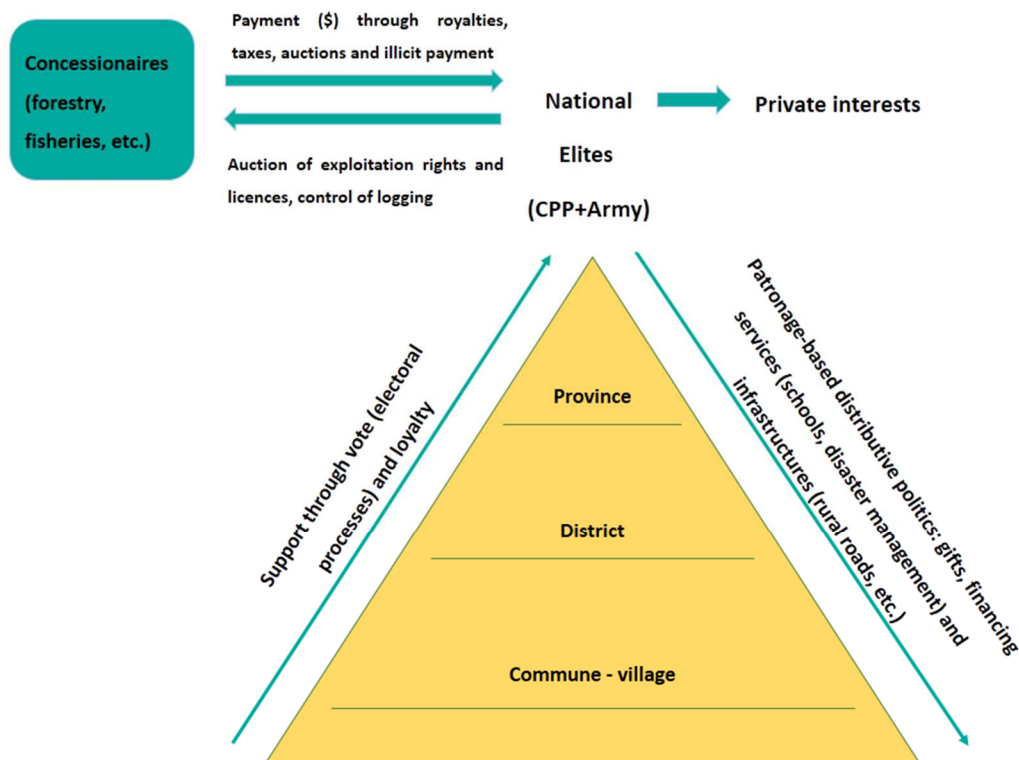


Figure 1 – Simplified outline of ‘neo-patrimonialism’ in Cambodia

(Source: authors)

The social and territorial dynamics revolving around large concession activities, which were decided at highest level of the State, allowed a variety of actors to become involved in similar processes at the sub-national level under the discretion of provincial, district or commune authorities (Diepart 2007a). In the 1990s, this dynamic patronage led to massive and illicit land acquisitions in the Cambodian countryside and to *de facto* privatisation of State resources. The corollary was a decrease in access to the common pool resources, which had a profoundly negative impact on rural livelihoods especially those of the more vulnerable households (Van Acker 1999; Degen *et al.* 2000; Ahmed 1998; Diepart 2010).

The whole logic of peasants' access to land and resources was considerably challenged. Private enclosures in the commons considerably constrained the production strategies of those who primarily depended on common pool resources (CPRs) to compensate for low rice production and, in some cases, forced movement away from land and natural resources (sometimes involving migration). As Van Acker (1999) rightly states, the decline in common pool resources put additional pressure on rice production, and a series of bad harvests could exert far more disastrous consequences than if the rice/livestock/fish system was functioning within a mix of individual land possession and access to common pool resources.



III. LAND AND POVERTY IN CONTEMPORARY CAMBODIA

The land reform initiated in the early 2000s had a complex situation to tackle. In this section, we will situate land issues in the wider development context that prevailed when the land reform was enacted.

1. LAND ISSUES IN THE EARLY 2000s: A SHORT SYNTHESIS

The 1990s had thrust the peasants into turmoil, and, in the early 2000s, land tenure management was in a deep institutional crisis.

Whereas agricultural land property rights were secured in the central plains during and following the Krom Samaki period, the recourse to markets, inappropriate use of power and the absence of effective measures to protect peasantries, resulted in a very rapid recrudescence of landlessness, land concentration and land insecurity. Land institutions able to tackle those problems simply did not exist. The concession system, reintroduced without proper guidance and control mechanisms, was at an impasse, and rent-seeking was the norm in the allocation and management of these concessions. Management plans were rarely implemented and mineral exploitation was leading to serious environmental degradation. Furthermore, the financial return these concessions made to the national treasury were limited compared with the revenue they were supposed to generate (Degen et al. 2000; Independant Forest Sector Review 2004).

Conflicts revolving around access to, and control of land and natural resources were rampant. In attempts to tackle those issues, the government of the Kingdom of Cambodia first established new laws and regulations. The priority was to lay down the legal basis to allow for the establishment of land tenure institutions capable of limiting the impact of land conflicts while ensuring the socio-economic development of the country. This is the context in which the Land Law of August 2001 was promulgated. It is also the reason why this law was not the synthesis of an inter-sectorial reflection on the challenges and stakes of rural development.

2. THE CONTRADICTIONS IN POVERTY REDUCTION

In 2004, the poverty rate indicating the percentage of people in the country who were living under the poverty line⁴ of USD 0.53 per person per day was 35.9 (Ministry of Planning 2006). This rate differed between regions: it was 2.4 percent in the Phnom Penh agglomeration, 20.9 percent in other urban agglomerations and 39.7 percent in those rural areas that account for 93 percent of rural poverty within the country.

The Ministry of Planning (2006) suggested that, between 1994 and 2004, poverty was reduced by 11.2 percent. However, this reduction was more significant in Phnom Penh (from 11.4 to 4.6 percent) and in other urban centres (from 36.6 to 20.5 percent) than it was in rural areas (from 43.1 to 33.7 percent). While poverty is largely a rural problem, the reduction in poverty has been mainly urban. This suggests that poverty reduction efforts were concentrated in zones where the important investments - which have stimulated the growth of the country over the past 15 years - were made (industries, tourism, services, and so on). Another study suggests that the reduction in poverty is socially uneven as the extreme poor (the bottom 20 percent) have experienced

4 The poverty line was estimated in 2004 at 2.124 KHR/person/day (USD 0.53). Eighty percent of this value comprised 'food basket' items and the remaining 20 percent, first-necessity non-food items.

significantly slower improvement in real consumption power than the “normal” poor and the better-off (World Bank 2006).

However, growth has reinforced socio-economic inequality between households. Between 1994 and 2004, the Gini index on consumption (which gives an indication of levels of inequality) increased from 0.35 to 0.42 (Fitzgerald *et al.* 2007). In urban areas, despite poverty reduction, inequalities remain significant because these areas primarily embrace wage labourers, whose daily income in 2007 had reached USD 2-3, and who had arithmetically passed the poverty line.

A new poverty assessment confirms the decrease in poverty (World Bank 2013) although comparison with the 1994 version is difficult because of a change in methodology. The rate calculated in 2012 using the World Bank poverty line⁵ was still considerable, at 18.6 percent, with almost 3 million people classed as ‘poor,’ and more than 8.1 million in the ‘near-poor’ bracket (World Bank 2013). Whereas the World Bank poverty line is essentially based on the level of consumption, the identification used by the Poor Households (IDPoor) Programme of the Ministry of Planning measures poverty based on socio-economic indicators relating to housing, ownership, productivity and food security characteristics (MoP and WFP 2012). According to this programme, the poverty rate at national level was 20.5 percent in 2012.

Notably, the new World Bank assessment suggests that inequality (measured with the Gini index on consumption) increased from 0.32 in 2004 to 0.37 in 2007, but that it decreased in every subsequent year to 0.28 in 2011. However, the report adds that the general premise that poverty is a rural problem has not changed. The actual gap between the rich and the poor has increased in absolute terms, and the majority of households that escaped poverty did so by only a small margin – they remain highly vulnerable to falling back into poverty (World Bank 2013).

In rural areas, an increasing number of studies show that interventions that aim to improve infrastructure and agricultural productivity, the emergence of non-farm labour opportunities and access to credit have principally favoured those households who have the capacity to grasp new market opportunities (Fitzgerald *et al.* 2007; Ovesen and Trankell 2014). This is because they have better resource endowments to purchase products to help them in new enterprises. The new opportunities offered by these developments have allowed a fraction of the peasantry to emerge through income diversification and small entrepreneurship. The large majority, however, remain excluded because they lack the resources or the networks. This evolution has gradually resulted in a differentiation of income formation mechanisms between households. This is confirmed in a number of studies suggesting that the poorest rural households generate the larger part of their income through agriculture and natural resources (World Bank 2006).

3. DEMOGRAPHIC INCREASE AND DEVELOPMENT CHALLENGES

According to the latest inter-censal survey, the population figure in 2013 was 14,676,591 (NIS 2013). Between 2008 and 2013 the annual demographic growth rate was 1.46 percent, somewhat lower than that during the 1998-2008 period (1.54 percent) but definitively higher than that of other countries in Southeast Asia. Even though the annual growth rate of the population over the past decade has been lower in the central plains region, the population increase exacerbated the demographic pressure on land, which was already very high (Annex 2). In a wider perspective, the demographic increase, and in particular the effects of the post-war baby boom, has resulted in an annual labour force increase estimated at 220,000 to 300,000 people (Lundström and Ronnas

⁵ Equivalent to 4,081 KHR per day.

2006). Agriculture has attained a limit in its capacity to absorb newcomers to the job market, so the creation of viable and productive jobs in the farm and non-farm sector is key and it is further challenged by the narrow development options in the secondary and tertiary sectors that rely mostly on garment factories, tourism and construction (Acharya *et al.* 2003; Jalilian 2008). A recent study suggests that by 2030 the annual increase in the economic labour force in rural areas will be approximately 140,000 people, which is lower than the annual increase that occurred between 1998 and 2004 stated above (Diepart 2016). The study suggests that the transfer of unskilled labour from agriculture to industry and tertiary sectors will lag behind this increase in the active rural population as the total job creation in the non-agricultural sectors remains limited (Diepart 2016). In this context, there is little doubt that the next generation of smallholder farmers will need agricultural land. And, in a wider perspective, job creation in the agricultural sector as well as an increase in agricultural productivities and incomes are among the core challenges that rural development policies need to tackle.

In the context of rampant rural poverty, truncated agrarian transition and low public investment⁶ in agriculture, the pressure on agriculture and on the peasants is immense. The sector needs to address the increase in rural population, the food consumption diversification of the urban population, which has grown proportionally faster (Annex 2), and policies for generating surplus export rice (Diepart 2011).



6 It is important to remember the formal interdiction against State subsidies for agriculture as set out in the World Trade Organisation agreement signed in 2004.

IV. CONTEMPORARY REFORMS IN LAND AND NATURAL RESOURCE MANAGEMENT: A FRAMEWORK

In this section, we outline the key elements of the framework we use to look into formalisation of land rights. Against the background of the 2001 Land Law we present the diversity and nature of the different land rights formalisation processes that jointly constitute the current land reform.

1. A CORNERSTONE: THE 2001 LAND LAW

Given all the shortcomings of the 1992 Land Law, expectations that in the 2001 legislation, land rights would be put in order were high. But it was not a straightforward matter given the magnitude of problems this law was supposed to tackle.

The new Land Law, promulgated in August 2001 (Royal Government of Cambodia 2001; 2011), was rooted in the first civil code adopted by the French in 1920. The Land Law differentiates between five different domains of property (Figure 2). The land continues to be owned by the State unless its ownership has been legally privatised, which can only happen on State land that does not have a public interest (roads, mountains, military bases, or land where a public service is delivered such as a school, an administrative post, public hospital land or land that has a natural origin such as forest, water bodies, river beds, and so on). State land with a public interest is called 'State public land'. In contrast, 'State private land' - defined simply as all State land that is not State public land - is the term for all State land that can be legally privatised. The private domain includes all land that has full legal private ownership. There is also ownership of Buddhist properties that exist within the premises of Buddhist monasteries, and the indigenous community land properties where indigenous peoples have established residence and where they carry out traditional swidden agriculture. Both monastery and commune property rights suppose collective ownership over land (East-West Management Institute 2003).

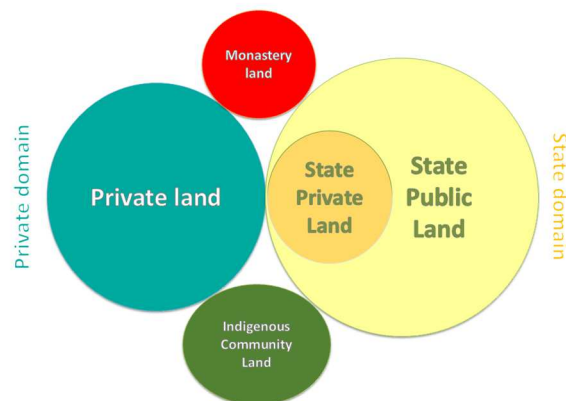


Figure 2 – Land property categories under the 2001 Land Law

The implementation of the Land Law embraced a number of 'new' formalisation processes of land property rights along pathways that are summarised in Figure 3. Central to these processes is the formalisation of private or collective property rights from State property (domain) and the differentiation between State private and State public land. This is highly contentious in the context of concessions that have remained a central element of State land management in Cambodia. Concession is a legal right established by contract with competent authority given to any natural person to occupy and use State private land for any specific purpose. There are three types of land concessions: Social Land Concessions (SLCs), Economic Land Concessions (ELCs), and Use, Development and Exploitation Concessions (UDEEC). The latter is governed by a separate law.

The core objective of the reform is two-fold. First it aims to improve tenure security and access to land through a market-based land distributive reform (relying on land titling, cadastral administration and land markets) and redistributive land reform through Social Land Concessions (land distribution to landless and land poor households). Second, the reform aims to stimulate investment to improve productivity and agricultural diversity under the rubric of the 'concession'. These elements are central in the influential World Bank strategic paper relating to Cambodia (World Bank 2007a) and, not surprisingly, in the different national development master plans (Royal Government of Cambodia 2006a; 2005a).



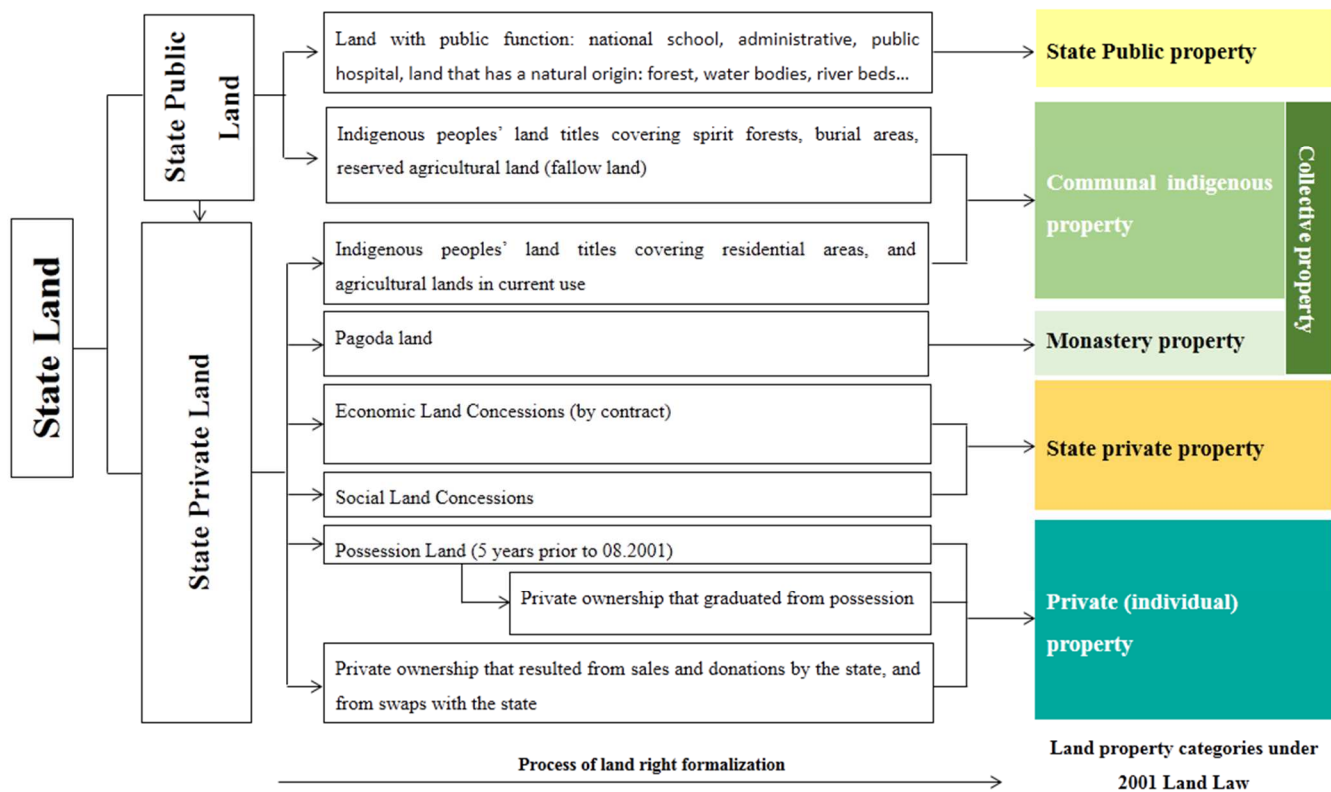


Figure 3 – Processes of property rights formalisation under the Land Law 2001

(Source: authors)

2. LOOKING INTO LAND RIGHTS FORMALISATION PROCESSES: THE 'LAND CONTROL MATRIX'

Our working definition of property includes the entire bundle of rights to use and access land, the right to earn benefit from land (in direct or indirect ways), the right to transfer land to others and the right to control and enforce all of these rights. In a wider perspective, our understanding of rights translates what Ribot and Peluso (2005) call 'the ability to benefit from land'.

The land property rights formalisation processes involve, and are concurrent with, a diversity of property rights and institutional reforms and actors. To look into the intricacies, we propose to situate these formalisation processes in a 'land control matrix'. The model of the land control matrix ('modèle des maîtrises foncières') was originally conceived by Le Roy *et al.* (1996) to capture the diversity of tenure situations in the context of Sub-Saharan Africa and to go beyond the very limiting typology of 'open access; private/state/common property regimes'. We have adapted this classification to fit the Cambodian context. It differentiates between two types of rights; the property rights given to the resources appropriators (the ones who use the resource) – horizontal axis – and the right to manage the property rights given to the resources appropriators – vertical axis (Figure 4).

On the horizontal axis, the matrix identifies five main types of property rights that a resource user may enjoy:

- ▷ Access: right to enter a defined, physical area
- ▷ Usufruct: right to harvest the product of a resource
- ▷ Management: right to regulate internal patterns of use or to transform the resource
- ▷ Possession: right to exclude other people from using the resource, right to transfer
- ▷ Ownership: right to use/keep land or resources at any time, right to alienate.

The vertical axis indicates that the property rights of resource users can be managed/controlled in five different ways which imply different types of [co-operation between] actors.

- ▷ Public: when the rules are common to all and applied in an undifferentiated manner
- ▷ State: right to land/resources is sanctioned by the State
- ▷ Co-management: right to land/resources are co-decided by the State and community according to an agreement or based on a contract
- ▷ Community: right to land/resources is decided by a community (unit of decision)
- ▷ Private: right to land /resources is managed by one individual/family.

Figure 4 indicates the main land and natural resources management reforms. Any given transformation of property rights at stake is indicated with an arrow; its origin characterises the type of property right that is being transformed and its end indicates the property right intended by the reform. For instance, the land titling process (lower right-hand corner) is indicated by the transformation of possession rights managed privately into private ownership rights.

The remainder of the working paper is an exploration of all land rights formalization processes presented on Figure 4.

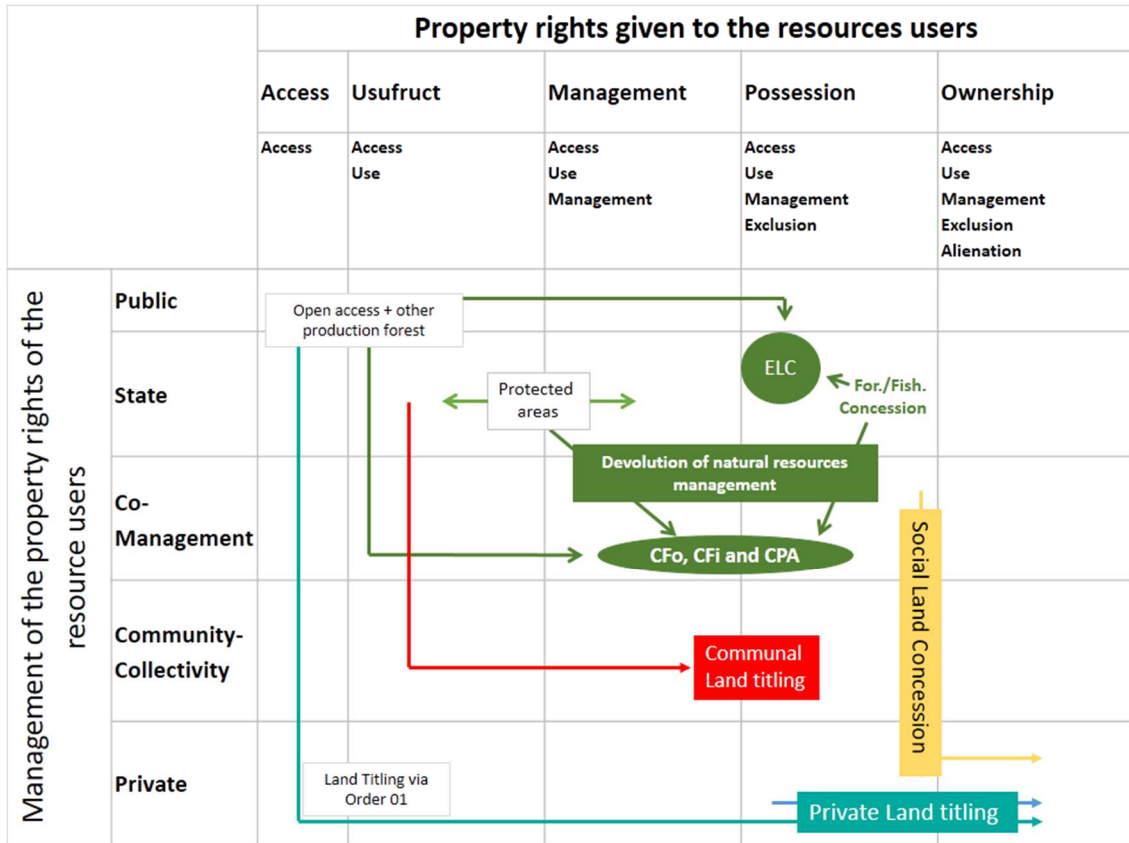


Figure 4 – Significant reforms of land tenure regimes presented along with a revised land control matrix

(Source: authors [adapted from Le Roy *et al.* 1996].)

V. LAND REFORMS IN LOWLAND CENTRAL PLAINS

Our journey into contemporary land reforms starts in the lowland central plain. In order to assess how land reforms tackle land (in)security and support the enhancement of agricultural productivities (land and labour), we examine how processes of differentiation in land access are at play in the central plains and how the land formalisation processes address them.

1. LAND ACCESS DIFFERENTIATION IN THE CENTRAL PLAINS

Understanding differentiation is not necessarily easy given the high heterogeneity of situations, actors and the absence of systematic and consistent longitudinal assessment of landholding size in Cambodia. Some basic facts are known. For example, all studies reveal the increase of agricultural landlessness in rural Cambodia (13 percent in 1997, 16 percent in 1999 and 20 percent in 2004) (World Bank 2006), and case studies indicate that land concentration has also increased since the early 2000s (Chan and Acharya 2002b; National Institute of Statistics 2014; 2015; 2016).

To shed more light on differentiation in land access, we base our argument here on the results of household surveys conducted in villages in the central plains. They include Takeo, Kampong Speu, Kampong Thom and Kampong Cham (n=1,443) between 1999 and 2003 (Diepart *et al.* 2006), in Kampong Thom (n=229) between 2004 and 2007 (Diepart 2010) and in Battambang between 2008 and 2011 (n=124) (Dupuis 2008). During these surveys the total landholding area of households was systematically quantified based on the mode of acquisition of each and every household plot.

All surveys indicated similar trends, namely three processes of land access in the central plains that cause land differentiation: a chayanovian-like differentiation process resulting from land distribution from *Krom Samaki*; negotiated land acquisition in the rice plain periphery; and land markets. The actual path of differentiation results from the interaction and synergy of these processes.

1.1 Chayanovian-like differentiation process initiated by land redistribution from *Krom Samaki*

A significant part of agricultural landholdings was directly distributed by the State (*Krom Samaki*) in the 1980s via processes we have indicated earlier. The point to note here is that households with larger land holdings acquired their land mainly through this redistribution. In other words, those who were able to acquire more land during *Krom Samaki* (because the household had more active labour and/or because it could appropriate cattle or equipment possessed before the war) are usually those who today have larger landholdings (i.e. several hectares). This is confirmed by a highly significant correlation between the age of household chiefs and the area size of the household agricultural landholding. Conversely, households with smaller landholdings are young households who have acquired their land mainly through inheritance, usually from elders who themselves received land from *Krom Samaki* (in all the case studies the area of land received from *Krom Samaki* and by inheritance is negatively correlated). The double age-biased phenomenon of land concentration and atomisation is observable in all cases and confirmed in studies conducted in similar agro-ecological environments (Ballard and So 2004). It follows a Chayanovian demographic differentiation cycle of the households in that the landholding size of a household follows the evolution of the age dependency ratio of the household. However, it deviates from the ideal theorised by Chayanov for reasons evoked earlier (i.e. irregularities in *Krom Samaki* land distribution). The reason why the legacy of this distribution still lingers is because the 2001 Land

Law blocks any acquisition of land not possessed before 2001 (Article 30), a point to which we will return in detail later.

1.2 Negotiated land acquisition at the edge of rice hinterlands

Land transfer in the period that followed the distribution by *Krom Samaki* - particularly in the 1990s - was not well regulated. We suggested earlier the possibility for certain households to access land in the forest periphery of the village kept as reserved land by local authorities. Access to this peripheral land - usually located in the forested or flooded common pool resources - was possible through either reclamation of land (secondary forestland) possessed by the household prior to the war or was contingent on good connections with commune and/or district authorities. In addition, starting in 2001 – when the Land Law which forbade forest land clearance was passed – land was negotiated financially in certain cases with local authorities. Nowadays, the intense land speculation by companies or individuals on State land has made access to additional land through clearing more difficult.

1.3 Land market

Land purchase and sale markets are substantially wealth-biased. The ability of households to acquire land through land purchase depends on their capacity to mobilise capital. In all of our surveys, there was a highly significant correlation between total income (and other wealth proxies) and the total purchased land area. Likewise, there was a significant correlation between total landholding size and total size of purchased land. Compared with land purchase transactions, land sales are less frequent, which suggests that outsiders to peasant communities are increasingly involved in land purchase.

Approximately 75 percent of all land sale transactions were motivated by factors that were non-productive (health reasons, basic household expenditure and debt payment) and were propelled by household vulnerability. The other 25 percent or so of land sales were motivated by productive factors, generally to provide the up-front capital needed to launch a non-farming activity.

In a context of low natural soil fertility and low public investment in agriculture, land-scarce households cannot ensure their food security through land resources only. They are obliged to rely on other sources of income to secure their livelihood. In these conditions, rice production has a high opportunity cost if it is compared with other activities. And if access to up-front working capital is restricted, land-scarce households are inclined to sell their land.

Unlike the assumptions of the neo-liberal conceptions in respect of land markets, land sales and purchases do not lead to a more equitable distribution of land between households. Land-scarce households purchase land to increase the marginal value of their labour only if they can afford it. Land-abundant households will usually not sell land to decrease their marginal costs because land is more than a simple commodity like any other. Land markets are embedded in the local social relations and are controlled by economic power. Also particularly important here is the role that urban (absent) landowners have played in the acquisition of State land through the market.

Nevertheless, through land rental markets peasants are involved in a system of access to land that strikes a better balance between land distribution among households and their capacity to actually cultivate it. Transfers of secondary rights through land leases among peasant households seem to be an option towards more equitable access to land since they are embedded in collective security mechanisms activated by peasant communities themselves (Diepart 2010).

2. MARKET-BASED DISTRIBUTIVE LAND REFORM: PRIVATE LAND REGISTRATION

> *Rationales*

An important element of the current land reform is the implementation of land titling which rest on the assumption that full ownership rights should be granted to people in order to raise the security of their tenure. This is inspired by the de Soto land rights approach which suggests that titles enable loans to be leveraged against land assets which would otherwise be dead capital (de Soto 2000). Another dimension of the current neo-liberal reform is the reliance on functioning markets to enable the transfers of land between users, i.e. farmers. When combined, the three processes are supposed to promote pro-poor growth, resulting from an aggregate productivity effect (as land is transferred from lower value to higher value uses); and an income distribution effect (improved livelihoods and incomes of land-scarce households) (Carter 2002; Deininger 2003).

The expectation that this will lead to ‘growth with more equity’ was certainly part of the rationale of donors when they pushed this land reform agenda. For the government, however, the objective was merely to put all the land registers under State control, probably to generate personal income from land transfers, and facilitate the possibilities for land taxation in the future. It is more the convergence of these different interests that sets the land registration process in motion.

> *Legal aspects*

Full legal private ownership today can originate from possession rights (*paukeas*) on State private land that graduates to full ownership under the 2001 Land Law, and from sales and donations of State private land by the State and swaps with the State (Save Cambodia's Wildlife 2014). As indicated earlier, this distinction between possession and ownership and the need to be possessor of the land to claim ownership is not new in Cambodia. It is rooted in the civil code of 1920 that was the framework for the land titling efforts in Cambodia under the French rule (see above). Under the 2001 law, possessors are people who started occupation of State private land in ways that were open, peaceful, continuous, and so on. Once the occupation had lasted for at least five years, the possessor was entitled to ownership (Figures 3 and 4). But a significant difference in the 2001 law from all preceding Cambodian laws and practices concerning possession is that it does not allow possession to be based on occupation that starts on or after the effective date of the law (Articles 30 and 31). This means that the practice of clearing and temporary occupation leading to legal possession that existed in the 1992 law is no longer allowed.

The registration of private property rights in respect of land is conceived to proceed along two routes: sporadic and systematic land registrations. The sporadic procedure is detailed in a sub-decree (Royal Government of Cambodia 2002c) which suggests slight modifications to the existing 1989 procedure. This procedure originates with the demand of the land possessor who wishes to upgrade his possession right into an ownership right. It involves the submission of an application to the cadastral authority, the technical measurement of the land, conflict resolution with neighbours (where relevant), public display, approval by city or provincial authorities and registration of the plot in the cadastral registry. Issuance of the title follows. As was the case in 1989, this procedure is still inefficient in rural Cambodia because the costs of the procedure that must be borne by farmers are simply prohibitive. It is only accessible to those who can afford it, and they are usually land investors who do not live in the village.

The Systematic Land Registration (SLR) scheme, detailed in another sub-decree (Royal Government of Cambodia 2000), works through the establishment of a cadastral index map. It is a system intended to complement the sporadic land registration by speeding up the process. SLR is a compulsory process meaning that 'in the adjudication area, every person has an obligation to participate and co-operate in demarcation and adjudication by giving oral testimonies, submitting documents, any other evidence and information' (Article 5) (Royal Government of Cambodia 2000). The registration is 'systematic' in that a team of surveyors from the cadastral administration are sent to a given commune where they register all residential and agricultural plots. The SLR procedure (Annex 3) differs significantly from that of the sporadic land registration and mobilises important technical and human infrastructures. Initially the operations were undertaken by the Land Management and Administration Project (LMAP), which is now called the Land Administration Sub-Sector Program (LA-SSP).

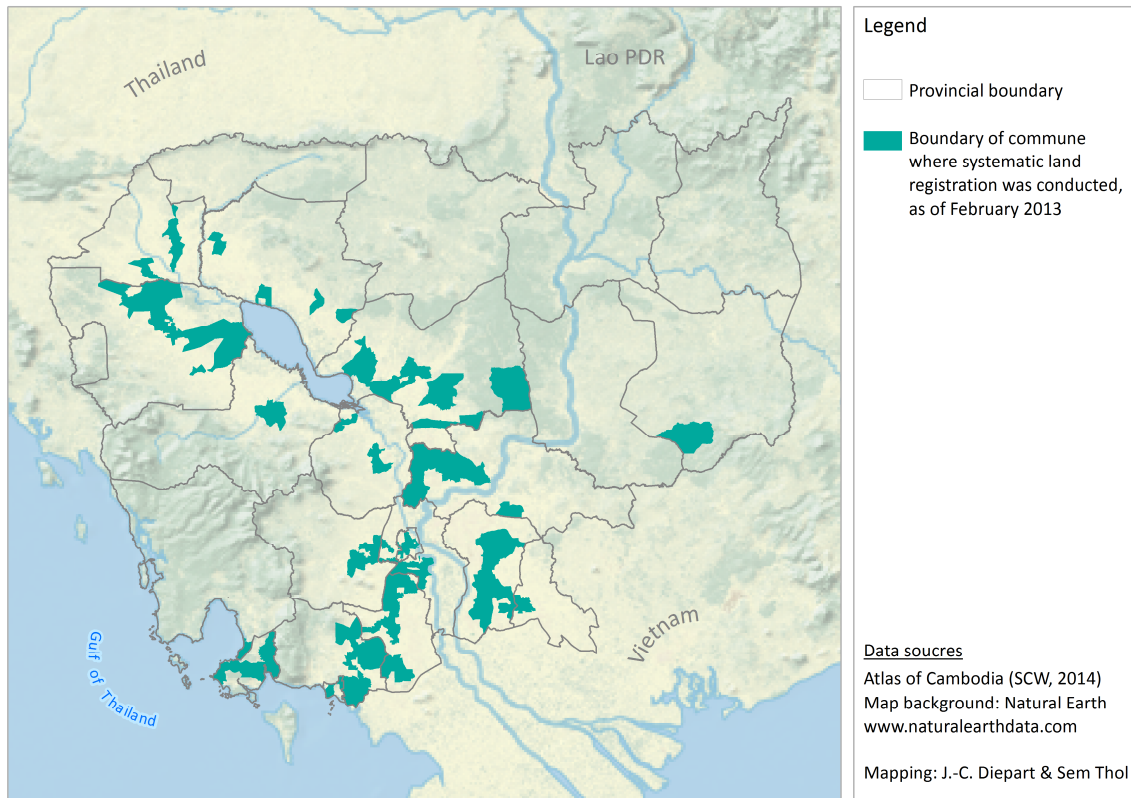
> *Outcomes*

According to a 2017 report from the Ministry of Land Management, Urban Planning and Construction (MLMUPC 2017), 4,881,063 titles have been granted to urban and rural families, which constitute about 66 percent of the total estimated number of land parcels to be titled (7 million plots)⁷. Of these, 3,626,158 titles were granted under the so-called Systematic Land Registration (SLR) scheme. Even though the SRL teams are now deployed throughout the country, the areas targeted by SLR are exclusively located in the lowland areas. A considerable number of private land titles have been delivered through sporadic land registration. The latest update from MLMUPC suggests that 613,282 titles have been issued through this procedure (MLMUPC 2017). The remaining titles (641,623) have been distributed as part of the land titling campaign organized in the context of Order 01 (MLMUPC 2017) designed to address overlapping land claims between peasants and companies on State land (see details below).

The titling process has accelerated over the years thanks to technological improvements but the areas where titles have not been delivered remain considerable. The current Ministry of Land Management, Urban Planning and Construction declared in September 2018 that the registration of all 7 million land plots will be completed by 2021 (Pech 2018).

As indicated on Map 3, the areas targeted by the LMAP titling efforts are exclusively located in the central lowland plain (around the Tonle Sap and in the Mekong alluvial region). Historically, the Cambodian population has been concentrated in lowland areas around the Tonle Sap Great Lake (Battambang, Siem Reap, Beanteay Meanchey, Pursat, Kampong Thom and Kampong Chhnang) and the Mekong Plain (Phnom Penh, Kampong Cham, Kandal, Prey Veng, Svay Rieng and Takeo). These regions are still the most densely populated in the country and account for the largest number of Cambodian people (Annex 2).

⁷ This compares with 2.1 million titles issued by December 2012. However, it is particularly difficult to estimate the number of parcels Cambodia has so this figure of 7 million should be considered with caution.



Map 3 – Location of areas (communes) where Systematic Land Registration had been conducted as of February 2013

Robin Biddulph (2010) suggests that this geography is explained by a conscious strategy on the part of the government to implement titling in areas that are free of disputes. He outlines the contradiction between this conflict-averse approach to titling with the original objectives of the project, which were to address issues of land grabbing, including by government and military actors.

The low prevalence of land conflicts in these central areas is due to the fact that these were regions where the decentralised and locally-driven distribution of land to the households by the *Krom Samaki* had allowed the peaceful creation of secured land tenure arrangements. This process strongly echoes the historical continuity in rural Cambodia to seek security of tenure predominantly through recognition of possession rights legitimised by local authorities through endogenous and low-cost local institutions.

The argument made by Biddulph about spatial exclusions in land titling at the national level is echoed by other researchers who have examined these issues at lower levels, i.e. at commune level. Ballard (2010) suggests that in these central areas, titling efforts were targeted towards what he calls 'high capacity areas', in and around rural market centres, where transport and credit services were more developed or in rice farming areas where land tenure was more stable and could thus provide more benefits relative to the time and expense of issuing titles. In such areas, titling benefits of developing formal land markets could be optimised. In Kampong Thom, a detailed case study in two communes showed that the titling efforts were concentrated in the

infrastructure-rich central area whereas the forested periphery was purposely avoided (Diepart 2007a).

Some authors argue that social exclusions have occurred during the land titling process as some areas were excised from the zone of adjudication prior to, or during, the survey process and demarcation. In those cases, land parcels were left unregistered because their status was unclear (Grimsditch *et al.* 2012). In another report focused on urban areas, Grimsditch *et al.* (2009) argued that titling conducted by LMAP had been an exclusionary process in that it precisely avoided directing efforts to those who were most vulnerable to eviction.

In 2001, Chan and Acharya had already noted that most land transactions were not following the official procedure because most of the plots were not registered but also - and most significantly - because people were unable to pay the land transaction tax demanded by the cadastral administration (Chan and Acharya 2002a). Our field observations and discussions, on-going since 2002, show that even with a land title in hand, people continue to rely largely on the village and commune authorities to legitimise their land acquisitions and transfers. In most cases, the process of authorising the transfer of land does not go to the next level (cadastral office) as is now the intention. Likewise, So (2009) suggests that much of the problem in the Systematic Land Registration scheme lies with the registration of land transfer. This involves a multi-stage procedure within a bureaucracy that is marred by corruption (with high and unpredictable costs), a problem he sees as systemic within the Cambodian neo-patrimonial regime.

As of today, it is also very difficult to evaluate the impact of titling on land productivity. Rice production and productivity has increased over the period during which land titles were delivered (Annex 1) but this increase is down to a convergence of elements such as the policy push for the adoption of improved rice varieties, the intensification of labour and other inputs, and improved irrigation. With existing datasets, we cannot attribute this increase to the 'land title' factor alone. However, a number of case studies suggest that the impact of titles on land productivity is rather limited (Diepart 2007a; Biddulph 2010; Grimsditch *et al.* 2012). As for credit, there are some divergences in views held, but it is a fact that most micro-banks and microcredit institutions in Cambodia provide credit against a land possession certificate approved by village and commune authorities and do not necessarily require a hard title. Additionally, micro-credit institutions regularly accept land titles as loan security even if the title is in the name of the previous land

owner, as long as the village leader prepares a letter attesting to the current ownership (field interview).



VI. MIGRATION AND THE MOVE OUT OF POVERTY

The extension of landholding through the principles of acquisition ‘by the plough’ is no longer possible at the periphery of most villages on the floodplain even if this has been an historical trend in the life of Cambodian peasants. This process is constrained by law and by the enclosure of common pool resources. In a context of demographic growth, land atomisation through inheritance combined with land acquisition/sale, this has inevitably resulted in land concentration. About 25 percent of households live with less than 0.5 ha of land, which is not enough to sustain a family throughout the year (Taylor 2011). So what options do land-scarce households have in the central plains?

The pursuit of livelihoods suggests an increase in the mobility of the agricultural landless and land-poor population and its redistribution through migration, both within and beyond the national border. The government views labour migration as an avenue for promoting employment and for reducing poverty among its workforce (Ministry of Labour and Vocational Training 2010). However, migration, propelled by the need to seek employment, is essentially managed by the individual households as part of their income diversification strategies. We focus here on domestic migration (not international) as the process of changing residence from one geographical location to another within the country (National Institute of Statistics 2009). We consider migration as ‘lifetime-migration’ which captures change of residence during an individual’s life from birth until the time of census enumeration (National Institute of Statistics 2010). According to this definition, and on the basis of the 2008 demographic census dataset (National Institute of Statistics 2009), the proportion of internal migrants within the total population of Cambodia was 25.8 percent (3,457,228 people), of whom 47.25 percent were inter-provincial migrants.

1. MOVING TO THE CITY

A relatively important migration is the movement from rural villages to the city, mostly to Phnom Penh. According to the National Institute of Statistics (2009), rural-to-urban migrants represent 28 percent of the total migrant population. Migrants to Phnom Penh come from every corner of the country but migration follows a basic ‘gravity model’ in that there are concentrations of migrants from provinces with large populations that are close-by, most notably Kampong Cham, Svay Rieng, Prey Veng and Takeo (Ministry of Planning 2012). Migrants to Phnom Penh are overwhelmingly young (the median age is 25 years). A greater number of young females migrate to Phnom Penh than any other age/sex group, reflecting the dominance of the garment industry in the city and in the national economy; 30 percent of migrants are females aged between 15 and 30 years.

Migrants are more likely than non-migrants to live alone or with siblings, and the average size of a migrant household is smaller than those of other households (Ministry of Planning 2012). Most migrants maintain close ties with parents living in their village of origin; many also have siblings living either in the same household or in the same village as their parents. That is, although the migrant might have left the family back in their village of origin, they have generally not left older parents behind with no other family members (Ministry of Planning 2012). Migrant workers, and especially female garment workers, contribute to the rural household economy; household agency rather than individual choice is at work when it comes to the decision to migrate to Phnom Penh, to share accommodation with siblings and, for many, to return to the home community to marry. More male migrants than female migrants move to Phnom Penh for educational purposes. More females migrate to Phnom Penh for labour (Ministry of Planning 2012).

2. THE INVISIBLE FLOW: RURAL-TO-RURAL MIGRATIONS

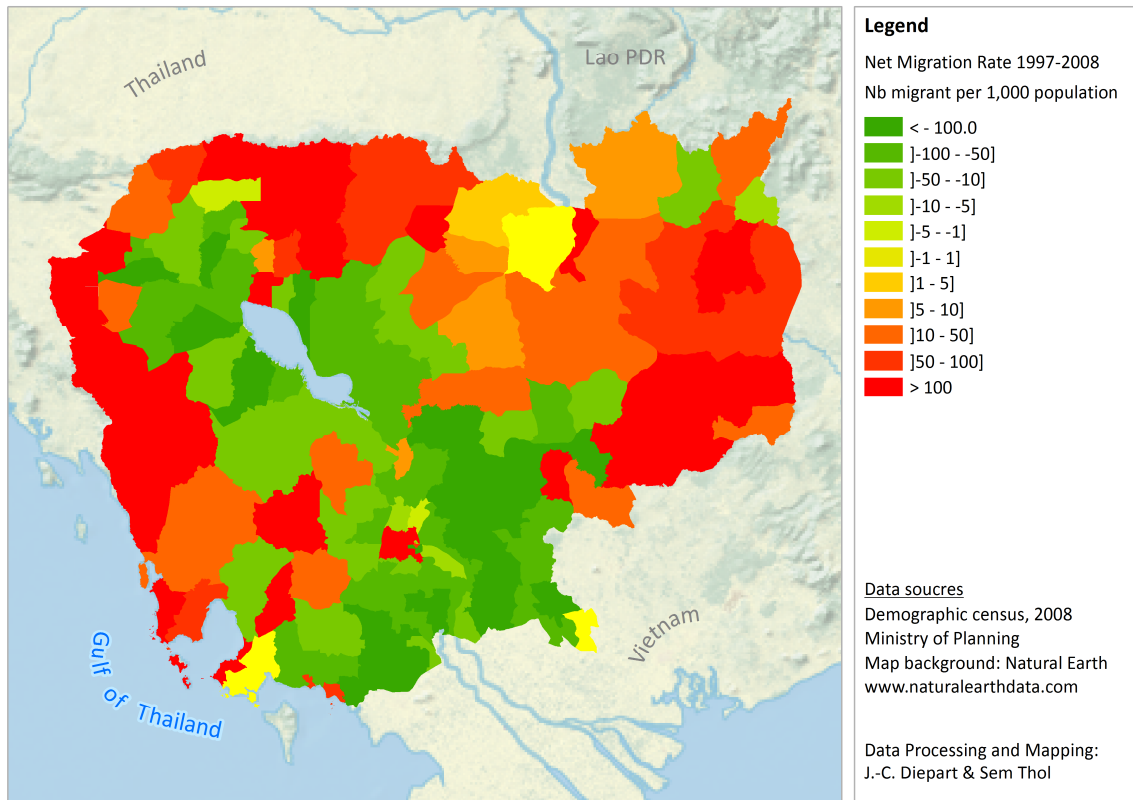
Another migrant flow has, however, remained practically unrecorded in Cambodia over the past 15 years. This involves people moving from one rural place to another. Bruno Maltoni (2006) has called it 'the invisible flow' to emphasise that it occurs off the radar of most planners and researchers. The phenomenon is not insignificant: it is nearly twice the rural-to-urban migration rate (representing 51 percent versus 28 percent of the total number of migrants).

To shed light on internal migrations, we have framed the analysis to the period 1997-2008 in order to form an accurate picture of recent trends. The 2008 demographic census dataset allows us to measure in- and out-migration movements at district level⁸, and to establish a 'net migration rate' index, which is the net number of migrants (in-migrant - out-migrant) per 1,000 population for each district: a positive value of 'net migration rate' signifies that more people had entered (influx) the district than had left it from 1997 to 2008, while a negative value means more people had left than had entered (outflow) the district during the same period.

Map 4 shows quite a striking contrast. The districts with a positive migratory dynamic (shown in red on the map) are rural districts located at the periphery of the central plains, on both the east and west sides of the Tonle Sap plain and the Mekong delta. In-migration has been particularly important in the Northwest, and reflects a movement of populations, mainly from the Mekong delta and Tonle Sap basin, suffering land shortages in these rice growing lands and seeking to acquire land in the forested areas near to the border between Cambodia and Thailand. Urban centres and cross-border towns (Phnom Penh, Siem Reap, Kampong Cham, Sihanoukville and Poipet) also have a clear positive net in-migration rate. These districts are characterised by high population growth rates indicating that migration plays an important role in the overall population change in those areas. The districts with a negative migratory dynamic (shown in green on the map) are essentially located in the Cambodian central plains (Tonle Sap plain and Mekong delta). Overall, these trends suggest a migration-related loss of population from lowland rice-based to upland regions (rural-to-rural) on the one hand and to urban centres (rural-to-urban) on the other⁹.

8 During the enumeration, people were asked if they had always been living in the current place of residence, and if not, how long they had been living in their current place of residence and what district they previously resided in. These questions and the relevant dataset form the basis of this permanent migration analysis.

9 Note that the significant number of rural-to-rural migration events that take place between communes within the same district are not visible here in this district-level net migration rate.



Map 4 – Net migration rate per district over the period 1997-2008

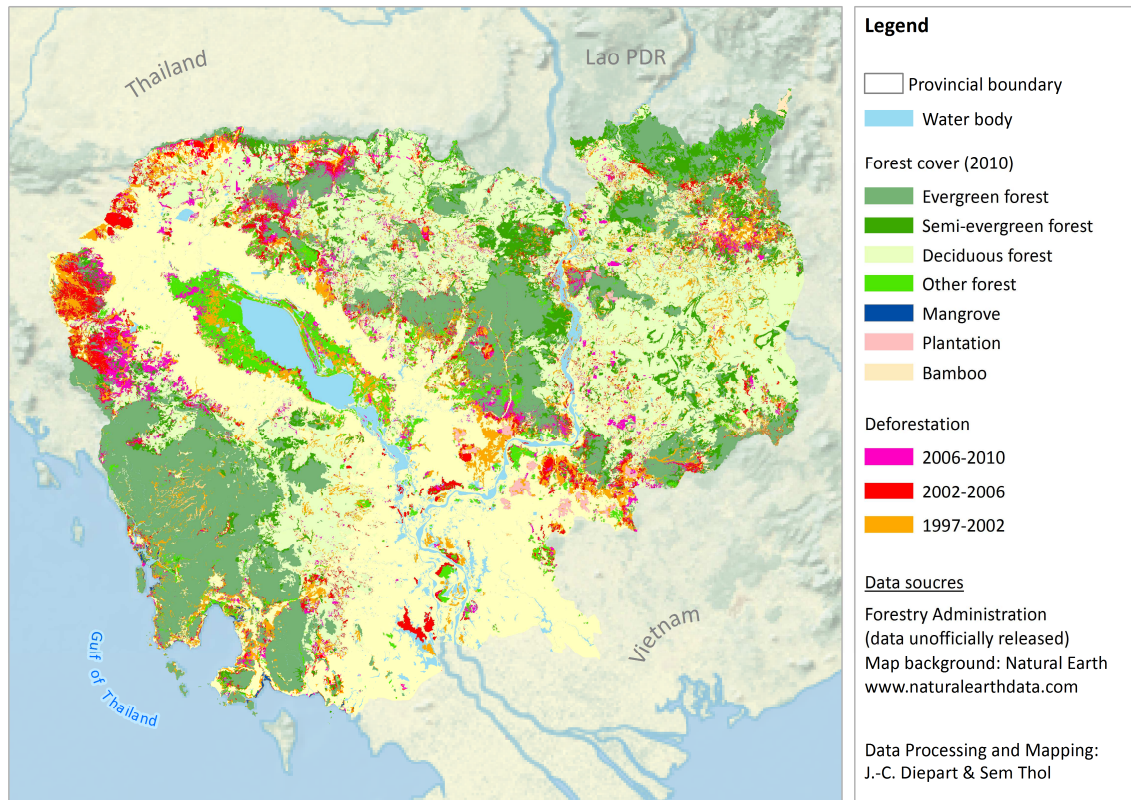
According to the 2008 demographic census dataset, 61 percent of migrant household heads declared that the main reason for their rural-rural migration was the search for employment (usually associated with lack of land) (NIS 2009). More detailed socio-economic studies have shown that the high population density makes access to land more competitive in the central plains and strengthens a process of land concentration and land conflicts. These constraints are further complicated by limited possibilities for agricultural intensification and by the limited opportunities for acquiring non-farm jobs (Chheang and Dulioust 2012; Pilgrim *et al.* 2012). Two important observations can be made from Figure 5, which shows the evolution of rural-to-rural migration since 1997. First, after the 1997 peak (migration movements associated with post-war Khmer Rouge integration), the phenomenon of migration to rural uplands has accelerated. Second, a significant proportion of migrants (66 percent) currently living in rural uplands are farmers working on their own land. This seems to confirm that migration is primarily driven by the search for agricultural land. The number of migrants involved in agricultural wage labour (5 percent) and non-farm employment (29 percent) became proportionally more significant towards 2007 indicating that the employment of migrants has shifted from peasant farming to wage employment and service trades as less land is available for agricultural expansion.



Figure 5 – Labour occupation of the migrant population (1997-2007) living in rural areas

Land appropriation by migrants results in agriculture pioneering and the closing of the forest frontier. The spatial correlation between both processes is indicated in Map 5 but, for the time being, it is impossible to quantify this phenomenon. Deforestation is complex and occurs through many different paths in Cambodia. It goes beyond the scope of this paper to look at these issues. What this analysis does suggest, however, is that the contribution of lowland-upland migratory movements to deforestation is not negligible.





Map 5 – Deforestation in Cambodia from 1997 to 2010

To a large extent, these migrations can be seen as an expression of the agency of peasant households in responding to rural poverty. It is also the expression of an on-going trend on the part of the Cambodian peasant to consider the principle of acquisition ‘by the plough’ as a legitimate mode of land appropriation, which has been a consistent trend throughout Cambodian agrarian history.

However, the total lack of coordination between these lowland-upland migrations and the granting of large land concessions (see details below) has resulted in an overlapping of land use between concessionaires and farmers. It is unfortunately impossible to measure this overlap exactly. However, it is very likely that by redistributing the Cambodian population from lowland to upland these so-called ‘invisible migrations’ have contributed to bringing a very high number of people into areas that were attributed to and claimed by Economic Land Concessions, before or after their arrival. These movements have certainly contributed to a worsening of existing tensions and confrontations in the uplands.

VII. LAND REFORMS IN PERIPHERAL UPLAND AREAS

The responses by State authorities to these migrations have been contradictory. We can perhaps speculate that the authorities were perfectly aware of these movements but as they conveyed contradictions it was perhaps best not to publicise them. National authorities were probably not unhappy to see spontaneous migration taking place as these movements were helping to solve poverty issues in the central plains that the government was unable or unwilling to tackle. In the destination region this migratory activity was exploited by local authorities as land appropriation by migrants legitimised their authority in land control (Diepart and Dupuis 2014).

As indicated earlier, the Land Law does not authorise the acquisition of forestland (i.e. State public land) after 2001. Land appropriations resulting from these migrations were completely at odds with the land legal framework that authorities were supposed to implement.

This has resulted in a huge population living on land that they appropriated after 2001 in respect of which they have virtually no land tenure security under the 2001 Land Law institutions. This is a problem that local authorities have addressed locally with local rules. However, the classic propaganda by the government and companies defends the concession model by blaming 'illegal' occupants for the grabbing of State land.

1. STATE LAND MANAGEMENT

In its strategy framework for land policy (Royal Government of Cambodia 2002b), the government foresees the creation of a State land inventory and State land classification system in order to 'clearly protect areas of public interest and maximise the benefit to the State from the granting of, sale, lease and concession or possession rights on land in the private domain'. The 'benefit to the State' is a rather complex notion, subject to different and contradictory interpretations. However, this debate is central to contemporary land reform, particularly in this political economy context.

A sub-decree foresees the mechanisms for State land management and State land classification (Royal Government of Cambodia 2005c) but in reality it has proceeded only marginally due to a lack of interest and resources on the part of the government. The lack of government commitment to State land mapping and classification was highlighted by the World Bank in a landmark LMAP review report in 2009:

... there was a decision in line with Cambodian Law that "the project will not title lands in areas where disputes are likely until agreements are reached on the status of the Land". Clarifying the status of the Land would have required the development and implementation of clear procedures for State land classification, which was planned under Component 5 but was only partially implemented resulting in the absence of official state mapping. As a result some land areas have been excluded from titling without clear criteria or explanation provided to the local communities. This creates a disconnect with LMAP's objective of improving land security and should therefore be reviewed and corrected. (World Bank 2009)

The government did not take up these World Bank recommendations and decided instead to cancel the USD 24.3 million World Bank contribution (loan) into the land titling project (Zsombor and Phorn 2010).

The process of State land classification and mapping seems rather to work by default with the granting of economic concessions (which require the transfer of land from public State to private State) and marginally granting Social Land Concessions and community entitlements. The inefficiency of State land management is also due to the absence of a sound and multi-level integrated land use planning system which would develop, organise and protect the entire territory through integrative and strategic territorial planning mechanisms (Thiel 2010; Diepart and Sem 2009).

1.1 Large-scale investments in agricultural plantation: Economic Land Concessions

> Rationales

After the fiasco of concessions management in the 1990s the government, with the support of donors, reintroduced the idea that [agro-industrial] concessions could be central to inclusive development in Cambodia. The idea of a concession is presented eloquently as a multi-benefit public-private partnership outlined in the sub-decree on Economic Land Concessions first released in December 2005 (Royal Government of Cambodia 2005b). Economic Land Concessions were expected to stimulate agro-industrial activities requiring a large capital investment that the State did not have, to develop so-called ‘under-utilised’ land. It would increase employment in rural areas, offer new opportunities for labour and employment in the countryside, and encourage local economic diversification through small and large investments upstream and downstream of the concession. It would also generate State revenue at national and sub-national levels. The rhetoric is not essentially different from what was intended decades earlier in respect of the forest and fisheries concession models (Diepart and Schoenberger 2017).

The idea of bringing large-scale investments into the Cambodian countryside was suggested and supported by the World Bank. In a context of rising interest in farmland (Deininger *et al.* 2011), which echoes the influential World Development Report 2008 that supports the reintegration of agriculture as a key growth driver in developing countries (World Bank 2007b), the Bank saw an opportunity to attract private investment and promote large-scale agricultural operations. While acknowledging the importance of securing property rights, the document suggests that ‘*Other improvements in the general and rural investment climate are essential to increasing the competitiveness of agriculture and other rural enterprise activities*’. The report further suggests ‘*that foreign agribusiness investment which can bring capital, technology and market access is negligible and focused mainly on activities such as plantations for pulp and paper which generate very limited employment, or informal traders who source raw material for processing in neighbouring countries*¹⁰’ (World Bank 2007a).

For the government of Cambodia, Economic Land Concessions represent an opportunity to reinvigorate the very profitable concessions economy after the collapse of the forest and fisheries concessions in the 1990s. The opportunities for foreign investment that Economic Land Concessions (ELCs) offer were also seen as a political tool to engage Cambodia in the Association of Southeast Asian Nations (ASEAN) integration by allowing neighbouring countries (States and companies) to invest in the Kingdom.

10 This orientation by the World Bank is suggested in an excellent literature review on ELCs, see Sperfeldt *et al.* 2012.

> *Legal aspects*

The Land Law of 2001 stipulates that Economic Land Concessions should be allocated to companies or individuals for the purpose of agro-industrial development. In terms of property rights, the process implies that the land granted does not have any public (public State land) function so it can be privatised (private State land) (Figure 4). This is highly problematic because the public utility is a rather equivocal concept.

ELCs were limited to land measuring no more than 10,000 ha granted for, originally, a maximum of 99 years¹¹. The relevant sub-decree on Economic Land Concessions was released in 2005 (Royal Government of Cambodia 2005b) to set the criteria and conditions that have to be fulfilled for the granting of ELCs and to monitor their implementation. ELCs are granted on the receipt of competitively solicited proposals by the Ministry of Agriculture, Forestry and Fisheries (MAFF), but unsolicited proposals may also be considered. ELC contracts are subject to payment on the part of the concessionaires. There are no conditions in respect of who can apply for an ELC and no restriction on foreigners obtaining concession contracts. An ELC must be developed within 12 months after issuance otherwise the contract will be cancelled. Additionally, the sub-decree stipulates a number of safeguards to avoid adverse impacts on the local population, such as the production of a land use plan, designed and approved locally, and solutions for re-settlement. In addition, environment and social impact assessments must be conducted, and public consultations held with local authorities and residents. To monitor these requirements, a Technical Secretariat on ELCs was established and hosted by MAFF with representatives from eight Ministries and other government institutions. This was established to support contracting authorities, and also covered requests for a voluntary reduction of land concessions exceeding the new limit of 10,000 hectares. The Technical Secretariat was tasked with a clear timetable to create a logbook containing all relevant information about concessions granted prior to the sub-decree (Sperfeldt *et al.* 2012).

The original sub-decree on ELCs stipulated that provincial and municipal governors had authority to grant ELCs of less than 1000 ha in land area or with a total investment value of less than 2,500 USD (Article 29) but this provision was revoked in a revision of the sub-decree released in 2008 (Royal Government of Cambodia 2008b). This arguably signalled a deliberate attempt to re-centralise the management of these concessions.

ELCs were previously allocated through two different Ministries - the Ministry of Agriculture Forestry and Fisheries (MAFF) and the Ministry of Environment (MoE) - but sub-decree 69 (Royal Government of Cambodia 2016) abolished this dual responsibility and the management of 73 ELCs has now been transferred from the MoE to MAFF¹². It is important to note that all ELCs originally allocated by the MoE are located in a Protected Area as defined by the mandate of this Ministry.

As we shall see below, the implementation and lack of control in ELC implementation put pressure on the Prime Minister to sign a moratorium on new ELCs in May 2012 (Royal Government of Cambodia 2012). This moratorium is one element of a document referred to as the Order 01, which also gave the impetus to an unprecedented land titling campaign in upland regions where ELCs are important and to a comprehensive evaluation of the ELCs. Before we present the results of this reform, we will take stock of the ELC experiment up to 2012.

11 It is now reduced to 50 years (Civil Code 2007, Article 247).

12 The MoE retained jurisdiction over 13 concession areas (89,253 ha) focusing on eco-tourism, hotels and resorts.

> *Data collection and processing*

The challenges in obtaining reliable, updated and detailed information about ELCs in Cambodia are substantial. The Ministry of Agriculture, Forestry and Fisheries (MAFF) chairs the Technical Secretariat on Economic Land Concessions but does not release any detailed information about ELCs. However, the aggregate figure the technical secretariat provides is arguably the most reliable considering that the Ministry was on the front-line during the ELC evaluation.

In order to offer more specific details to the public, a few organisations are committed to monitoring ELC development based on data available in the public domain (Royal Gazette, sub-decrees, business registration, contracts, and so on). But the recent evaluation of concessions initiated in 2012 has considerably changed the agro-industrial development landscape in Cambodia (see below) and has made the work of these organisations rather tedious.

The figures on ELCs that are presented here result from the correction and consolidation of the Open Development Cambodia (ODC) dataset¹³, which has the advantage of being very detailed and spatially explicit. However, this dataset presents some important limitations. ODC records go back to 1996 but do not capture the changes such as the downsizing or revocation of ELCs that occurred before 2012. So, in the event (which is not unusual) that a concession was cancelled and reattributed to another company, the concession area is double-counted. Also, the ODC database includes agro-industrial development schemes that are not technically formalised by an ELC contract. This is typically the case of rubber plantations that were privatised from former State farms. Even if they are inventoried by ODC, MAFF does not record these plantations as ELCs *stricto sensu* (MAFF 2018).

Furthermore, it is important to keep in mind that there can be significant differences between the area specified in the ELC contract and the actual area of the concession on the ground. The main reason is a practice - common among concessionnaires – to clear more land than specified in their contract in order to take advantage of valuable timber that is cut down before making space for agricultural operations.

> *Outcomes*

The ODC dataset suggests that 286 contracts of large-scale plantations were established in Cambodia by the end of December 2012 – all of these are located in the peripheral upland regions of the country – covering a total area 2,188,413 ha (Table 1). This figure includes the areas of plantation that are not registered as ELCs, which is 183,821 ha (8 percent of the total). When we compute the area based on the geographic attributes of the concession provided in the ODC dataset, the total land area is rather 2,593,971 ha (Table 1), including 186,140 ha of non-ELC plantations (7 percent of the total). And, as explained above, these figures are likely an overestimation of the actual area granted as an ELC due to the double-counting problem in the dataset.

13 <https://opendevelopmentcambodia.net/dataset/?id=economiclandconcessions>

Table 1 – Number and area of large-scale agricultural plantations granted in Cambodia, by December 2012

	Number of Large-Scale Plantations*	Area (ha)	
		In contract*	On the ground*
ELC	257	2,004,592	2,407,831
Not ELC	29	183,821	186,140
Total	286	2,188,413	2,593,971

(Source: ODC dataset corrected and computed by the authors)

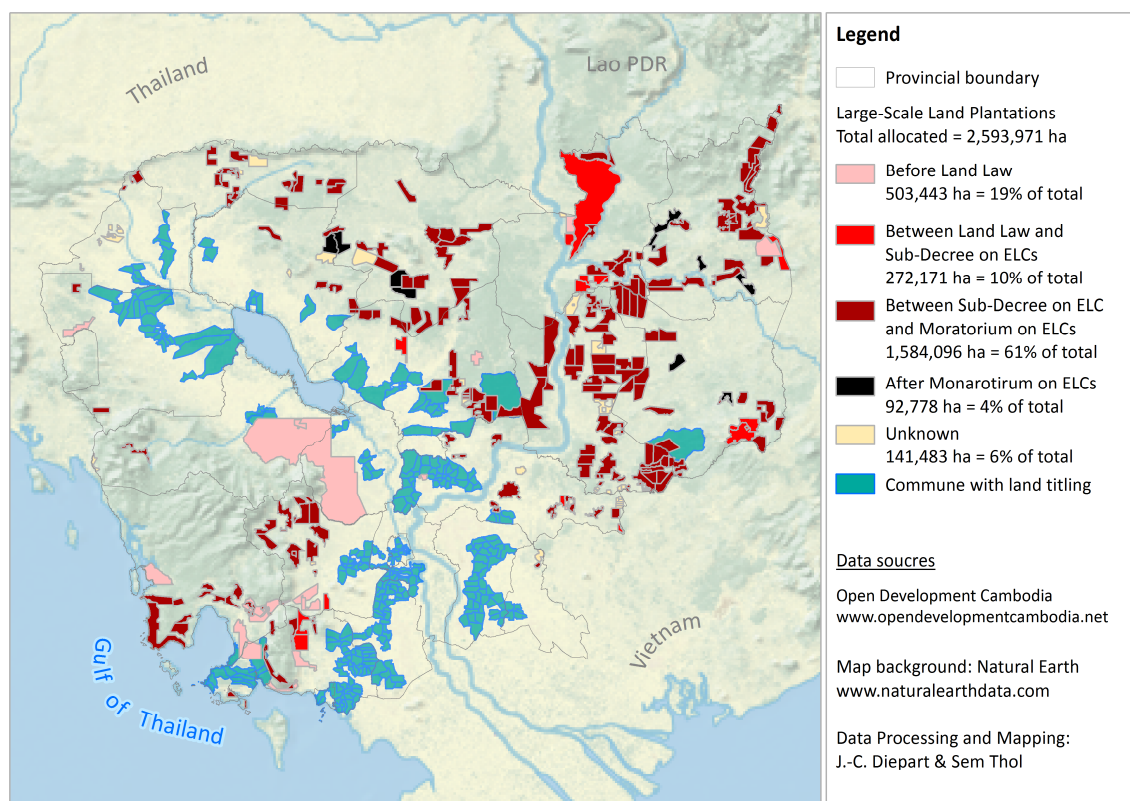
*: The figures may include plantations that are double-counted (area and size).

ELCs have been granted in four different phases¹⁴ (Map 6). In the period prior to the promulgation of the Land Law in August 2001, 18 ELCs were granted for mostly tree plantation activities (Figure 6) to Cambodian investors (Figure 7) on production/conversion forestland. These concessions cover 20 percent of the total area attributed. Noticeably, the Pheapimex concession in Kampong Chhnang and Pursat provinces covers 315,000 ha, accounting for nearly half of the total land conceded before 2001. Pheapimex is a well-known concession company owned by the Cambodian Lao Meng Khin and his wife Choeung Sopheap. According to Global Witness (2007), Pheapimex is Cambodia's most powerful company, controlling 7.4 percent of Cambodia's total land area through its logging and Economic Land Concessions.



14 For a detailed review of the number of contracts and cancellations over these periods, see Sperfeldt *et al.* 2012

During the second phase, between the Land Law and the promulgation of the ELC sub-decree, the legal framework for ELCs was not fully in place. A small number of ELCs were granted (11 percent of the total) in a manner very similar to that in the previous phase (Figures 6 and 7). With the release of the sub-decree in December 2005, and the setting up of the Technical Secretariat on ELCs and *ad hoc* provincial committees (Sperfeldt *et al.* 2012), the number of ELC contracts has increased and the nature of ELCs has changed (Figures 6 and 7).



Map 6 – Evolution in the granting of large-scale agricultural plantations in Cambodia

Starting in 2008, the increase in demand and prices for rubber fuelled a rush for rubber production in Cambodia. Our dataset shows that 22 percent of the total ELC area is made up of rubber plantations (15 percent owned by Vietnamese companies and 7 percent by Chinese companies). The rubber lobby seems powerful because, starting in 2008, Economic Land Concessions for rubber production were granted in Protected Areas (under the management of the Ministry of Environment) and in Protection Forests (under the management of the Forestry Administration). In 2012, the number of ELCs dipped sharply as a result of the moratorium on ELCs ordered by Prime Minister Hun Sen, which suggests a real engagement by the government in halting the granting of new ELCs. Despite the moratorium, however, a number of ELC contracts were signed after May 2012 on the grounds that permission for this had been given prior to the Order 01 (see below). Information gathered by ADHOC shows that at least 33 ELCs were granted after the announcement of the moratorium (ADHOC 2014; Zsombor and Aun 2012).

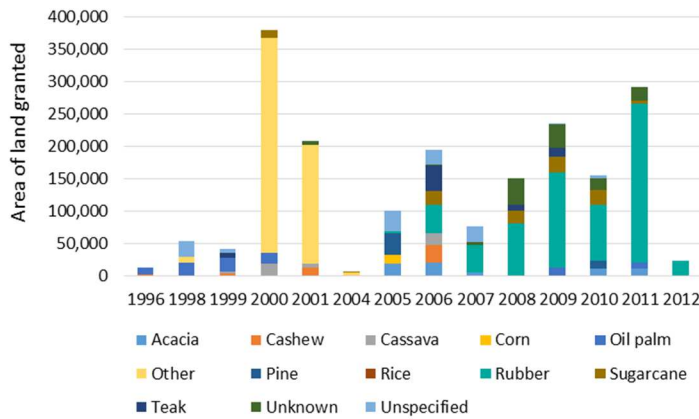


Figure 6 – Large-scale plantations area allocated per year and per purpose

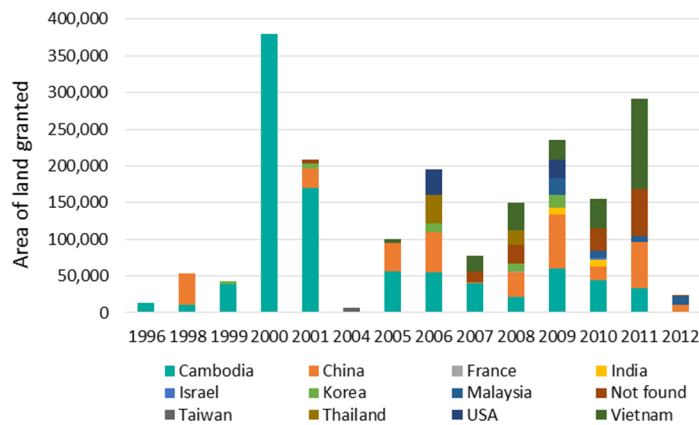


Figure 7 – Large scale plantations area allocated per year and per nationality of concessionaire

There is a broad consensus in Cambodia among NGOs and researchers that the process of authorising and implementing Economic Land Concessions shows clear deviations from the established legal and policy framework (Sperfeldt *et al.* 2012). We have discussed above the lack of transparency surrounding the granting and monitoring of these concessions. Particularly problematic is the misuse of power in arbitrarily determining that a parcel of land has lost its public functions/interest and can be converted to State private land.

Public consultations and social and environmental impact assessments that should be carefully undertaken before any agreement is signed are rarely conducted properly, if at all (Sperfeldt *et al.* 2012).

Economic assessments of the concession activities have also underestimated or simply ignored an evaluation of the opportunity costs of the investment. These opportunity costs include the value-added that would have been created if the land had been left to peasants (Dufumier 1996). Hansen and Neth (2006) have clearly shown that under most scenarios concerning the conversion of natural forest into plantations, the value-added created by peasant-driven collection of forest products, combined with sustainable exploitation of timber and non-timber resources, is actually higher than value-added created by large-scale plantations. Likewise, surveys comparing the value-added generated by rice production with a peasant-driver multi-functional use in the Tonle Sap floodplain have also revealed that peasants are more efficient in generating value-added per

hectare, and that the distribution resulting from the peasant mode of management is more inclusive (Evans *et al.* 2005; Diepart 2007b; 2010).

During the implementation of these large-scale agricultural investments, a number of irregularities are also reported as routine issues. In certain instances, concession contracts are signed to by-pass the 2002 logging ban on timber, given that the implementation of the concession pre-supposes the clearing of the land before the establishment of agro-industrial plantations (the sub-decree on ELCs is explicit about this option). The case of the rubber plantation in Tumring (Kampong Thom) made jurisprudence on the matter. Very often in these cases, logging operations are conducted well beyond the boundaries of the concession area (Global Witness 2007).

Partly connected to these logging operations inside ELCs, another abuse frequently reported is the under-utilisation of land (Hibou 2004; Sperfeldt *et al.* 2012). The operations of agro-industrial development that were supposed to take place on ELC grounds have not kept their promises and this has resulted in a failure to cultivate the land. A survey by the UNDP (cited in Sperfeldt *et al.* 2012) reported that as of 2005 only 2 percent of the land under concession was being actively cultivated. In 2016, the area planted represented only 20 percent of the total land area allocated (Fella *et al.* 2017).

On the question of labour, there seems to be no clear consensus among researchers. Ngo and Chan (2010) point to certain cases where ELC activities have generated wage labour opportunities that have been beneficial to the local people. Others suggest that the impact of ELCs on labour has been marginal (Middleton and Hak 2006). In all cases, the reconfiguration of labour relationships (i.e. social labour relations between households and the emergence of forced wage labour resulting from land dispossession) are under-researched in the Cambodian context.

A recent country-wide review of ELCs in Cambodia shows them to be located in relatively accessible areas within around three hours travelling time from the closest provincial capital. The spatial analysis offered by the author also highlights the fact that rubber plantations are granted in relatively richer areas of the country. These two observations contradict the government's stated determination that ELCs would support infrastructure development in remote areas and help to reduce poverty (Peeters 2015).

Most of the time, the land attributed to companies as concessions is already occupied and/or cultivated by people. Basic field visits to these sites would have sufficed to make this clear – not to mention a social impact assessment. In those cases, the initiation of timber logging or land clearing operations has led to land dispossession and forced evictions which are conducted by military or para-military forces working for concession companies. Human rights violations associated with these evictions have been consistent in the conclusions of reports and public declarations by successive High Commissioners for Human Rights in Cambodia (Leuprecht 2004; Ghai 2007; Subedi 2012). Furthermore, confrontations and struggles associated with large-scale land acquisition have contributed to violent and varied social movements for land played out across the country.

The huge increase in land conflicts revolving around the question of land dispossession and forced eviction are discussed and analysed in a number of reports (ADHOC 2013; Cambodian Human Rights Action Committee 2009) and scholarly works (Schneider 2011; Gironde *et al.* 2016). In early 2014, LICADHO indicated that, since 2000, Cambodia had passed the 'shameful milestone' of half a million land conflicts across the provinces it monitors, most of them representing people in opposition to concessions (Cuddy and Titthara 2014). In a wider perspective, it is also suggested

that the vicious cycle of inequality revolving around Economic Land Concessions will considerably limit the economic development of the country in the future (Rudi *et al.* 2014).

1.2 Redistributive land reform: Social Land Concessions programme

> *Rationales*

Social Land Concessions (SLCs) are tools the government has promoted to address the problem of landlessness and near landlessness. The problem of landlessness was already an issue in the 1990s and was further exacerbated by the return of war refugees from the camps located in the Northwest of Cambodia along the Thai border. Landlessness had also increased through market-based land dispossession initiated in the 1980s (see above) and by the increasing number of demobilised soldiers. As indicated earlier, access to vacant land by appropriation had become illegal after 2001 so the government needed to have a specific instrument for land redistribution that could address landlessness and correct the so-called undesired effects of the market-based distributive land reform.

> *Legal aspects of the property right formalisation*

SLCs imply a legal mechanism to transfer private State land for social purposes to the poor (landless or near landless) who lack land for residential and/or family farming purposes. This is further detailed in the procedure for granting and managing SCL schemes in a sub-decree (Royal Government of Cambodia 2003). There are two types of SLCs: local and national. The basic difference between them lies in how they are initiated. Local SLCs are initiated through commune councils, and national SLCs are initiated by relevant Ministries. Under the SLC programme, concession (*samphathian*) rights are very similar to possession (*paukeas*), at least for the first five years. If a Social Land Concession recipient remains on the land for a period of five years and follows legal duties, he/she can apply to convert the concession rights to ownership (Figure 4).

> *Outcomes*

The national SLC programme differentiates between three types of concession: Social Land Concessions managed by the government to address civil poor landlessness; Social Land Concessions managed by the government to address the demobilisation of soldiers from the Royal Armed Forces; and the Social Land Concession programme co-managed between the government and donor organisations (World Bank, GIZ, LWD and Habitat for Humanity).

According to the Ministry of Land Management, Urban Planning and Construction (MLMUPC), as of June 2014, the total number of recipients of the Social Land Concession programme was 12,374 families in respect of 113,167 ha of land registered for settlement, infrastructure and agriculture (Table 2). This represents only 4 percent of the total area granted as Economic Land Concessions.

Table 2 – Outreach of the Social Land Concession programme as of June 2014

Social Land Concession (SLC) programme	Province	Area of land registered (ha)	Number of beneficiaries (households)
SLC programme for demobilised soldiers	Kampong Speu, Kratie, Battambang, Kampot, Pursat, Kampong Chhnang, Preah Sinahouk, Siem Reap, Steung Treng, Banteay Meanchey, Kampong Thom, Mondulhiri, Koh Kong, Ratanakiri and Oddar Meanchey	49,312 ha	3,409 HH
SLC programme for the civil poor	Kampong Speu, Kratie, Kampong Thom, Kampong Cham and Mondulhiri	50,103 ha	4,388 HH
SLCs supported by donor organisations (World Bank, GIZ, LWD and UN Habitat for Humanity)	Kratie, Tbong Khmum, Kampong Thom, Kampong Chhnang, Kampong Speu and Battambang	13,752 ha	4,577 HH
Total		113,167 ha	12,374 HH

(Source: MLMUPC [2014])

The procedure and mechanisms of SLCs are very time-consuming for authorities and we suggest that there is a clear lack of political will on the part of the government to implement a more ambitious SLC policy. It seems that there is competition between Economic Land Concessions and Social Land Concessions in the allocation of State land by State representatives. Müller (2012) suggested three main reasons why the donor-driven SLC programme is not performing well: i) it does not address the complexity of social, political and legal assemblages in the uplands; ii) it is not properly integrated with other land distribution instruments such as the regulation of unauthorised land use; and iii) clear articulation between SLC and ELC schemes is often lacking. In a context of rising landlessness, the failure of the Social Land Concession programme is problematic because there is no real response by the government to tackle a fundamental problem faced by peasants: their need for agricultural land (Diepart 2016).

1.3 Forest and fisheries resources co-management

> *Rationales*

At the end of the 1990s, the forest and fisheries concession system was at an impasse. The 2002 moratorium (still in operation today) meant that all logging operations (for national trade and export) were forbidden in the country; this declaration did not put an end to all logging operations but it marked an important turning point in the management of forests in the Kingdom. Ironically, the forest concessions reforms agenda was supported and promoted by the same donors who had strongly supported the concessions system in the past. The reforms engaged by the government are comprehensive. They aim to reduce or cancel large parts of forest and fisheries concessions. This institutional reform of the administrations in charge includes a new law on forestry (Royal Government of Cambodia 2002a) and a new law on fisheries (Royal Government of Cambodia 2006b) that prepared the ground for the emergence and implementation of more community-based natural resource management. These new management modalities aim to

ensure the sustainable management of natural resources, biodiversity conservation and the protection of peasant production systems. The approach rests on the premise that local communities living close to the resources are best suited to manage these sustainably: locals know the local ecosystems better than anyone else, they are in a better position to identify management problems affecting those ecosystems and to identify possible solutions. Their proximity to the resource base allows for a better control of the resources. The central hypothesis is that if communities contribute to defining access, use and control rules to govern the resources, the management will be more technically efficient and more socially acceptable and just (Li 2002; Ken Serey 2005).

But in Cambodia, the increased attention given to local level natural resource management should be considered as a national programme initiated by the Ministries rather than a desire by the community members themselves for more autonomy. The gradual devolution of natural resource management has taken place in a context where the concession system has been in total chaos and co-management has been somehow a recognition by the State of its own failure to ensure sustainable resource management (Hobley 2007). At the same time, the devolution of natural resource management to the grassroots level marked a renewed opportunity for the State to exercise control over natural resources while externalising the costs of the operational management and monitoring.

On an international level, interest in natural resource co-management is now shared by an increasing number of countries and actors, echoing the messages of the Rio Conference in 1992. Interventions by the International Monetary Fund (IMF), the World Bank and the Asian Development Bank (ADB) in macro-economic national budget rationalisation have also persuaded governments to explore new institutional arrangements and engage in new partnerships to meet local interests and government needs to reduce public expenditure (Gilmour and Fisher 1998).

> *Legal aspects of the property right formalisation*

The system of community-based natural resource management does not mean that the State has decentralised all of its rights and prerogatives to the local level. From a property rights point of view this transfer of responsibilities to local communities implies the transformation of either a concession (forest-fisheries) or a so-called open access into co-management tenure regimes (Figure 4). To enjoy Community Forestry or Community Fisheries rights, a 'community' must be formally constituted with registered members and an elected management committee. Internal rules need to be written in a by-law and resources management plans, with clear benefit-sharing mechanisms, need to be designed and approved by the administration. The community entitlement area needs to be demarcated on a map and on the ground before a management agreement (for 15 years) can be signed by both parties. A careful reading of relevant sub-decrees shows that, under these co-management schemes, the State keeps large prerogatives over the resources: commercial exploitation of timber or commercial fishing activities, tax collection in cases of illegal activities and even the extension of the co-management agreement.

> *Outcomes*

In early 2000, the overall area of forest concessions had been drastically reduced from the initial high of 7,084,215 ha to 2,163,600 ha (Save Cambodia's Wildlife 2006). As an alternative, the Forestry Administration and donors alike started to encourage the establishment of community-based forest management schemes. Fifteen years later, the contribution of community forests remains modest. The most recent data indicates that there are 485 Community Forestry schemes in the country covering a total surface area of 410,025 ha (Forestry Administration 2015), still far from the target of 2,000,000 ha (Ty 2009).

To the constraints imposed by the weak security of tenure in respect of co-management schemes, it is important to highlight the fact that most Community Forestry areas are those of degraded forest (Independent Forest Sector Review 2004). The best forest areas are usually turned into Economic Land Concessions.

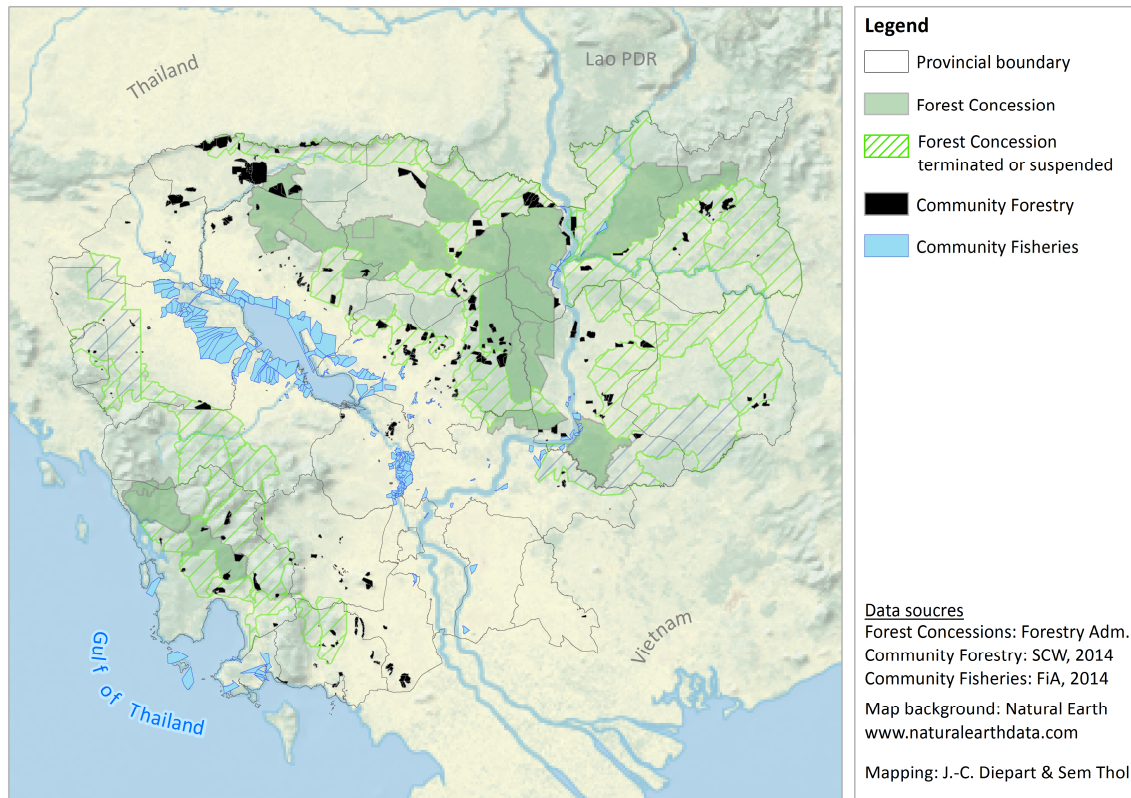
Similarly, the area covered by fishing concessions was reduced by 56 percent in 2001 (Mom 2009). In 2012, the remaining fishing lot system was totally abolished. In areas released from fishing lots, the Fisheries Administration and donors have encouraged the establishment of Community Fisheries. According to most recent statistics there are 358 Community Fisheries covering an area of 537,837 ha throughout the country and involving 115,000 families (Save Cambodia's Wildlife 2014) (Map 7).



Despite an increased attention to local issues and an engagement in support of social justice, the co-management approach has not been able to effectively enhance the conditions enjoyed by rural communities for a number of reasons¹⁵:

- ▷ Largely supported by international organisations, co-management was envisaged by a large number of NGOs as a stepping-stone for fundraising.
- ▷ In order to provide an interface between the community and the State, management committees were quickly legitimised by democratic elections in the villages. But these committees and their actions were rarely articulated to peasant associations anchored in the local territories and histories. These new governance bodies were actually more instrumental in facilitating dialogue between the State and the community but they did not enjoy a strong legitimacy with local groups.

¹⁵ The following section is reproduced (translated) from part of a text originally published in French in 2011, entitled 'The narrow path of a peasant-driven rural development in Cambodia; agriculture, modernisation of land tenure and struggles of actors' (Diepart 2011).



Map 7 – Remaining forest concessions (unclear status) and forest and fisheries co-management schemes (as of 2014)

Practitioners have privileged technical solutions for the management of resources at the local level. The political dialogue with the State, essential in defining the overall contribution of rural communities to natural resource management, was somehow neglected. This institutional gap did not allow for a proper recognition of local communities as central actors in the management of the common pool resources.

In addition, generally speaking, the implementation of co-management on the ground has tried to conform to the interests of the community. But communities are not socially homogenous. Instead they are highly hierarchical along asymmetric patronage relations (Ledgerwood and Vijghen 2002). This heterogeneity is also manifested in the diversity of roles played by common pool resources in production systems. The level of participation of a family in co-management efforts always depends on the labour opportunity costs and the benefits the family expects to receive. Local practitioners have not always been able to capture these differences. As a result, resource co-management has reinforced local elites and instituted new relationships of dependency between those elites and the forest/fisheries administrations, usually at the expense of the poor and most vulnerable.

Resource co-management, as implemented in Cambodia, has introduced a principle of community exclusivity on the access, use and management of the resources (Figure 4), which is quite at odds with the endogenous logic of land and resource management. This principle applied to new community territories has actually reinforced and stimulated the over-exploitation of resources in places where this exclusivity principle is not applied. While trying to provide an

answer towards the achievement of sustainable development, co-management has also exacerbated the effects of a tragedy of the commons *sensu* Hardin (1968).

But the development of co-management was an important response to the general outcry against the enclosure of resources that accompanied the granting of Economic Land Concessions across the country. To sum up, we argue that the rallying of communities to the development of natural resource co-management has more to do with the need to protect Cambodian natural resources against those external interests than to a genuine need for, and interest in, improving natural resource management practices.

1.4 Protected Area management and zoning

In an effort to promote nature conservation, a royal decree for Protected Areas was issued in 1993 to empower the Ministry of Environment to lead, manage and develop a Protected Area system to preserve Cambodia's land, forest, wildlife, wetlands and coastal zones (Royal Government of Cambodia, 1993). Twenty-four areas were included in the decree covering a total area of 3.2 million ha (Royal Government of Cambodia 1993), including three RAMSAR sites (i.e. wetlands of international importance) signifying the global importance of Cambodian wetlands (Save Cambodia's Wildlife 2006). This decree distinguished four different types of protected natural areas: national parks; wildlife reserves; protected scenic view areas; and multi-purpose areas. To these, we should add the protected forests managed under the mandate of the Forestry Administration of the Ministry of Agriculture, Forestry and Fisheries that cover a total area of 1,531,357 ha.

As a result of sub-decree 69, however, the management of nine protected forest areas was transferred to the MoE in 2016. The sub-decree has also officially created eight new Protected Areas but two of these have recently been cancelled (Royal Government of Cambodia 2018). In 2017, three new biodiversity conservation corridors covering a total of 1.5 M ha were added to the system of Protected Area (Royal Government of Cambodia 2017). So, altogether, the total area under Protected Area management now equals 7.5 million ha (41 percent of Cambodia's total national territory).

In 2008, a Law on Protected Areas (Royal Government of Cambodia 2008a) clarified information on the management of Cambodia's Protected Areas (PA). Among other things it proposed that each PA be structured into four spatial zones:

- ▷ Core zone area(s) containing biodiversity, natural resources, ecosystems and genetic resources of high value for scientific research and for sustaining the environment;
- ▷ Conservation zone area(s) is/are adjacent to the core zone to which access by local communities and people living within and next to the PA to use resources is allowed in accordance with the *prakas* issued by the MoE;
- ▷ The sustainable use zone is a zone of great economic value for national development and the development of the Protected Area itself. It also promotes the improvement in the livelihoods of local communities and ethnic minorities. The law on Protected Areas foresees the possibility of giving part of the land in the sustainable use zone to communities. An agreement would then be signed between the Ministry of Environment and local communities to give them the rights to manage and exploit the so-called Community Protected Area (CPA) for a period of 15 years. According to updated statistics from the Ministry of Environment, there are 151 CPAs in Cambodia covering a total land area of 255,076 ha (Ministry of Environment 2018).

- ▷ A community zone entails area(s) to be utilised in the socio-economic development of the local communities. It might contain residential land, rice fields and field gardens (*chamkar*), and should protect the rights of ethnic minorities. The release of land titles is possible for these areas but there should be authorisation by the Ministry of Environment in consistency with the Land Law.

1.5 Communal land titling

The possibility offered by the 2001 Land Law to grant communal land titling is particularly significant as it was the first time in Cambodian history that this had occurred (Save Cambodia's Wildlife 2014). In this country, however, communal land titling has been integrally linked and restricted to the idea of indigenous people (*chuncheat daeum pheak tech*) (Baird 2013; Ehrentraut 2013).

Indigenous people are defined in the 2001 Land Law as a group of people who reside in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity, who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use (Article 23). Although land use and tenure practices of indigenous people can be diverse, they are clustered under the term 'swidden agriculture', a land use system that employs a natural or improved fallow phase, which is longer than the cultivation phase (and sufficiently long for the land to become dominated by woody vegetation) and is then cleared by means of fire (Mertz *et al.* 2009). In Cambodia, the proportion of indigenous people is generally reckoned to range from 1 to 1.4 percent of the population as a whole (Baird 2013). The computation of the demographic census shows that indigenous people represent up to 1.38 percent of the population (Figure 8)¹⁶.

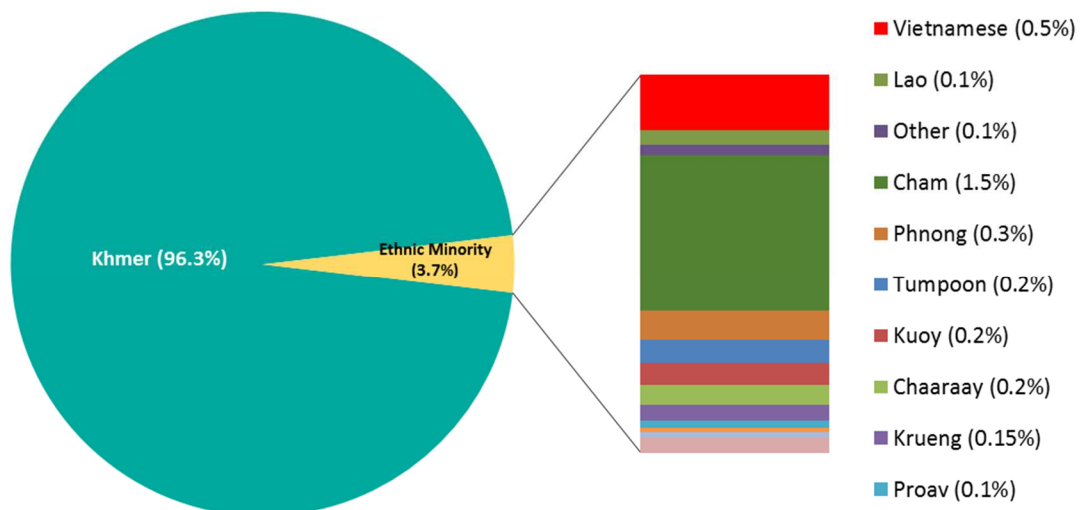


Figure 8 – Distribution of the Cambodian population by mother tongue

(Source: Demographic Census 2008 [National Institute of Statistics 2009])

¹⁶ During the enumeration of the demographic census the question on ethnicity was not asked. The figure of 1.38 percent comes from the computation of people based on mother tongue.

> *Legal framework*

Article 25 of the 2001 Land Law clearly specifies that indigenous communities can exercise collective ownership over land where they have established residence and where they carry out traditional agriculture (Figure 4). This collective ownership is granted by the State to the indigenous communities but the community does not have the right to dispose to any person or group land relating to any collective ownership that is State public property (Save Cambodia's Wildlife 2014). The transfer of land (through alienation) to private ownership is possible to any member of the community if he/she decides to leave the group (East-West Management Institute 2003).

In 2009, the sub-decree #83 was brought into effect to establish the legal foundation for the granting of collective titles to indigenous communities. The procedures foreseen by the sub-decree include three steps: first, the designation of the community as 'indigenous' by the Ministry of Rural Development; second, the registration of the village as a legal entity by the Ministry of Interior; and third the actual issuance of the communal land titles by the Ministry of Land Management, Urban Planning and Construction (Royal Government of Cambodia 2009).

The land to be transferred by the State under a communal land title is classified in the sub-decree into five categories - agricultural production land and residential land (transferred from State private land) and lands reserved for this kind of cultivation, burial areas and spirit forests (transferred from State public land) (Royal Government of Cambodia 2009).

> *Outcomes*

A total of 166 communities have engaged in the process of applying for a communal title. Of these, 117 indigenous communities have been recognised as such by the Ministry of Rural Development and 111 have been recognized as IP by the Ministry of Interior. Among them, only 19 communities (1,784 households) have completed the process and received the land titles covering an area of 16,271 ha (MLMUPC 2017)

Practitioners and activists criticise the communal land titling process as being too long and complicated (Vize and Hornung 2013; Rabe 2013). The same authors challenge the willingness of the government to actually implement their policies.

Vize and Hornung (2013) rightly point out that the timespan between the enactment of the Land Law in 2001 and the promulgation of the sub-decree in 2009 has been too long. In the meantime, massive and quick changes, driven by the granting of Economic Land Concessions and illegal logging, have put tremendous pressure on the land and resource bases of indigenous people. These changes have forced or induced the conversion of swidden to permanent upland agriculture; in those cases, the access to communal land titles is not envisaged or desired, or is simply not possible.

Ian Baird (2013) argues that the Land Law and its application need to be subjected to more scrutiny, as the separation of agricultural lands from forestlands has resulted in communal land titling mainly covering agricultural lands, while forestlands have become increasingly reified as State owned. The entanglement between communal land titling and indigenous people has adversely affected non-indigenous communities (e.g. Khmer) practising swidden agriculture who are denied any right to communal land titles. Another threat affecting communal land titling has been the possibility for indigenous people to obtain private ownership of land through fast upland titling schemes. In a context where swidden agriculture has already been changed into a composite agricultural system with permanent upland cropping, the choice of private land instead

of land possessed under a communal land title is, in some cases, a more rational and relevant choice for indigenous people (see below).

Recently, a convergence of interests between agencies of the United Nations, academics and a group of NGOs resulted in the formation of a group aiming to lobby for more and faster land titling (Narim and Crothers 2014; Pye 2013). If the land rights of indigenous people need to be protected, past experience has shown that it is unlikely that communal land titling alone will provide tenure security. In order for secure access for indigenous people to be achieved more effectively, greater attention should perhaps be focused on articulating communal land titling with other forms of tenure such as Community Forestry areas, Community Protected Areas, forestry partnerships, and suchlike.

1.6 Addressing 'irregular' occupation of State land

A number of decisions have been formulated and issued by the government to address the problem of irregular occupation of State land. In areas located within the vicinity of ELCs, these decisions promote the notion that land should be reserved and allocated under the mechanisms of Social Land Concessions. These are to provide land for future labourers for residential and family farming purposes (*Sor Cho Nor* No. 699, dated 18 May 2007) or as compensation to people who might be affected by ELCs (*Sor Cho Nor* No.1117 dated 1 September 2011). Müller and Zültdorf (2013) note that both of these decisions have not yet been implemented.

Circular 02 on the 'regularisation of illegal occupants on State land' was released in 2007 and is a more elaborate document to address the issue. This is an important document because it shows the recognition by the government of the problem that illegal State land acquisition is not only driven by speculators but also by 'real poor families who are truly using land for their livelihoods' (Royal Government of Cambodia 2007). The procedure through which the State can reclaim lands illegally occupied by someone is very explicit. The text specifies that if illegal State landholders are in reality landless, land poor or disadvantaged persons, they may receive preferential treatment in obtaining land of an appropriate size for pursuing their livelihoods, based on their actual situation. However, the text does not provide any further information about how this preferential treatment is to be applied. In addition, Circular 02 endeavours to address illegal occupation of State land on a case-by-case basis which considerably limits the operational capacity of the mechanism. Müller and Zültdorf (2013) indicate that the MLMUPC prepared for the circular's implementation through studies and the drafting of a technical handbook, which covers provision of ownership, usufruct, both long- and short-term leases, Social Land Concessions, and confiscation of State land. But as it was unclear who would take the lead, the operation and implementation were delayed.

2. ORDER 01 AND NEW LAND RIGHTS FORMALISATION

On 7 May 2012, Prime Minister Hun Sen announced a moratorium on granting Economic Land Concessions. The text, entitled 'Measures to strengthen and enhance the effectiveness of the management of Economic Land Concessions (ELCs)', is a document now commonly known as Order 01. In addition to freezing the granting of new ELCs, Order 01 initiated an unprecedented land titling campaign in areas where the land rights of people and companies overlap onto State land. Order 01 also provided the impetus for a complete evaluation of ELCs across the country.

2.1 Rationales and institutional framework

The decision by the prime minister to suspend the granting of ELCs and to issue Order 01 was the result of the convergence of a different events.

The violence of conflicts and confrontations between concessionaires and people reached a climax on 26 April 2012 when Chut Wutty, a prominent environmental activist, was shot dead in Koh Kong while investigating forest crimes and illegal logging (Soenthrith and Seiff 2014). This murder occurred two weeks before a 14-year-old girl was shot dead by heavily armed officials who opened fire on a group of about 1,000 families they were sent to evict in Kratie province (Titthara 2012). There is little doubt that the decision by the Prime Minister to announce Order 01 was also motivated politically in a move to lessen social unrest one month before the commune elections and one year ahead of the legislative election in July 2013. But the political motivation, as argued by Müller and Zülsdorf (2013), was also internal to the ruling party. At the end of 2011, the Minister of MAFF seemingly tried to win a more independent position for the distribution of ELCs and to by-pass the legal requirement of cadastral registration of ELC land prior to the awarding of an ELC contract. They suggest that Order 01 was an attempt by the Prime Minister to strengthen his leadership internally over some dissenting forces in his own government (Müller and Zülsdorf 2013)

The text of Order 01 is a rather short, consisting of four directives:

- ▷ The granting of ELCs should be provisionally suspended (the moratorium *per se*)
- ▷ Ministries, institutions and relevant competent authorities should effectively implement the policy and all the conditions within the government's decisions in respect of the granting of ELCs, and pay attention to the implementation of the ELC contracts. In particular they should implement the policy of the 'leopard skin formula' (see the explanation below), without affecting the community land of indigenous minorities and local people's livelihoods, with the aim that these ELCs would provide real and sustainable benefits for the country and its citizens;
- ▷ The government should revoke the contracts of ELCs where the companies/concessionaires that had already been given agreements had not complied with the existing legal procedures or with the contract. This related, in particular, to any who had cut trees for sale but had not subsequently developed the concession, or who had encroached on additional land, or had left part of the land unexploited for sale, or had undertaken business deals that violated the conditions of the contract, or had taken land from local people or indigenous communities. Concessions revoked in this way should revert to the direct management of the state;
- ▷ In cases where an ELC had received agreement in principle from the government before the date of this order, the additional legal principles and existing procedures would be implemented (Royal Government of Cambodia 2012).

The 'leopard skin' formula suggests that the plots cultivated by people prior to the granting of the ELCs should be excised from the concession through titling; the process results in a concession that resembles spotted leopard skin. Order 01 was presented by the government as a further step in the land reform to resolve and strongly legalise the unclear situation that had arisen in respect of the occupation of State land (Im 2012). The programme was ambitious, and, by September 2012, the Minister of Land Management, Urban Planning and Construction estimated that the total area covered by titles could be 1.8 million ha (approximately 0.7 million parcels) and could benefit up to 470,000 households (Im 2012). The whole titling scheme was scheduled to take

place from July 2012 to June 2013. This is a rather narrow time frame given the objectives assigned to it.

Order 01 specifically tries to address land security inside the ELCs through private land titling. However, an instructions (Letter 666 SCN, 26 June 2012) sent six weeks later by the Council of Ministers to the Ministry of Land Management in charge of the titling programme had a quite different content. The letter suggests that the adjudication areas for the Order 01 titling scheme would need to be much broader and would include other land categories such as forest concessions, Protected Areas, and forest rehabilitation (Deika) from provincial authorities. This was later further enlarged to include all other types of forest¹⁷.

Instructions to guide the implementation of the titling efforts under Order 01 suggest that land covering less than 5 ha and up to 200 ha with legal and continued occupancy should be given private ownership titling. Areas which were not cultivated should be given a 'small economic concession contract' (Letter N. 666 SCN dated 26 June 2012).

The 'small economic concession' fees shall be determined and distributed as a source of income to the sub-national level, by the Ministry of Economy and Finance (Letter 684 SCN, 02 July 2012). However, this option of granting small economic concessions received a lot of criticism and in practice none of these small economic concession contracts were ever actually designed and granted (Titthara and Boyle 2012).

The principal mechanism to provide private ownership under Order 01 works through donation. This is a legal disposition, outlined in Article 83 of 2001 Land Law, that stipulates that '*the State may only donate immovable property to natural persons and for social reasons in order to allow them to reside or carry out subsistence farming*'. The original plan of the Order 01 was also to provide communal land titles where indigenous people practice swidden agriculture. However, this part of the programme was scrapped weeks later as it was deemed too costly and time-consuming (Woods and Naren 2013).

Given the short time frame of the project, the titling procedure established under the Systematic Land Registration scheme had to be considerably shortened (Annex 3). To do so, the Council of Ministers formally authorised the provincial State Land Management Committee, chaired by the provincial governor, through a decision letter (*Sor Cho Nor*), to i) reclassify all the land as State private land and ii) directly transfer State private land through donation to people (legal expert at MLMUPCC, personal communication April 2014). Land is reclassified by sub-decree or royal decree depending on the status of the land, with royal decrees referring to Protected Areas, and so on.

2.2 Land titling

> Operational aspects of the implementation

Müller and Zülsdorf (2013) provide a detailed description of how the human resources were mobilised and organised to implement titling schemes. The government registration staff totalled 2,000 people (1,000 people from the Systematic Land Registration process complemented by around 1,000 members of staff from MLMUPC and also from other Ministries). To support the government staff, up to 2,015 young volunteers from 30 universities, institutes, public and private

17 In the absence of State land mapping and classification, the extent of forest cover in 2002 is used by the cadastral administration to determine the location of State land, which is simply where there are certain types of forest. 2002 was chosen as the date closest to 2001, which was the date of the relevant Land Law.

training centres and three NGOs were recruited and sent to the field in 168 teams (so-called *Krom Niset*). Each team comprised up to 12 government staff members including representatives from the Ministry of Interior, MAFF, MoE and other Ministries and up to 12 young volunteers. The presence of young people in supporting the titling process received great attention in the media, and the whole initiative became known as '*Prime Minister youths' land titling campaign*'.



Figure 9 – Impression of titling field work under Order 01

(Source: Lipes, 2012)

Müller and Zülsdorf (2013) indicate that the young people's role was to help the professional officials with sub-national level surveying. Before going to the field a two-day training session was provided at MLMUPC on surveying with the hand-held GPS and how to fill in forms for the personal data of families who occupy land. The rest was training on-the-job as they worked with the experienced professionals. The students wore military uniforms with the MLMUPC logo and were directly under the command of the PM's cabinet and in particular General Hun Manith, a son of the Prime Minister. Transport was provided in the form of military vehicles. Food was provided and they usually slept in tents. They were entitled to a premium of USD 200 per month. The deployment of the students was limited to six months. In January 2013 they went back to study and then the next group was trained and sent to the field.

> *Outreach of the land titling campaign*

Given the lack of transparency in the whole process, access to data is not easy. The overall titling scheme database was supposed to be finalised and consolidated by April 2014 (legal expert at MLMUPCC, personal communication April 2014) but we could only access the database in a version dated 26 February 2014.

According to this database, 1,010,429 ha were measured under the Order 01 land titling initiative of which 92 percent (927,848 ha) was formally distributed to 317,444 families with titles. The remaining 8 percent has been kept as reserved land for future use. Within only a year, the outreach of the land titling under Order 01 was dramatic when compared with the 625,000 families reached through the Systematic Land Registration efforts over a 10-year period (2002 and 2012).

The most important share (30 percent) of land excised from State land came from un-categorised forest cover, while only 25 percent came from ELCs (Figure 10). Interestingly, the database specifies a few other land categories where titles were issued which were not initially foreseen (Community Forestry and Social Land Concessions). It seems clear from these results that the Order 01 titling scheme had gone far beyond land issues connected to ELCs, Forest Concessions and Protected Areas as initially formulated. It had been a comprehensive attempt to address the problem of insecurity associated with irregular occupation of State land in the Cambodian uplands.

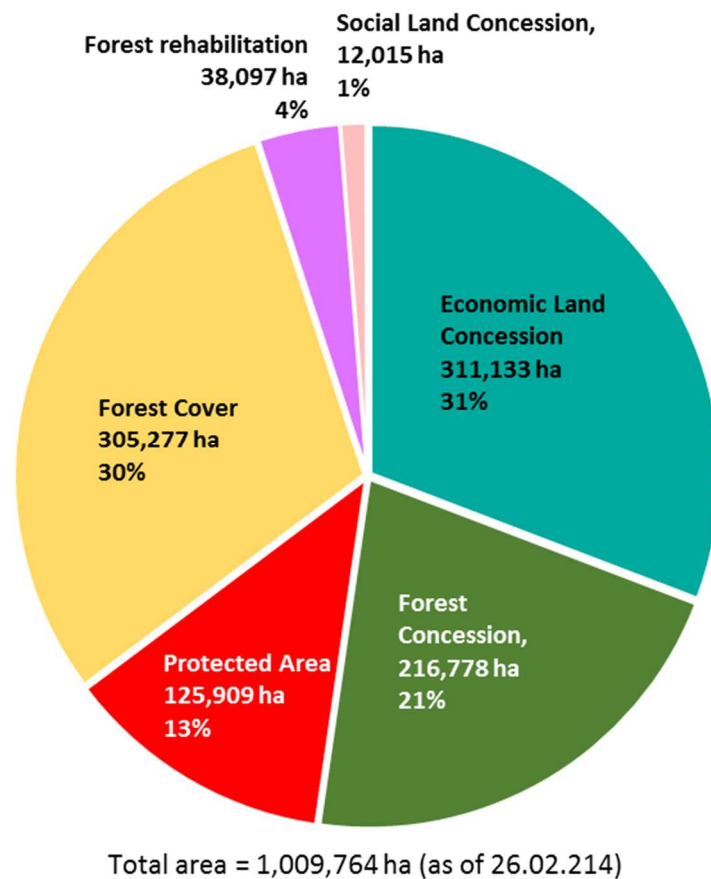
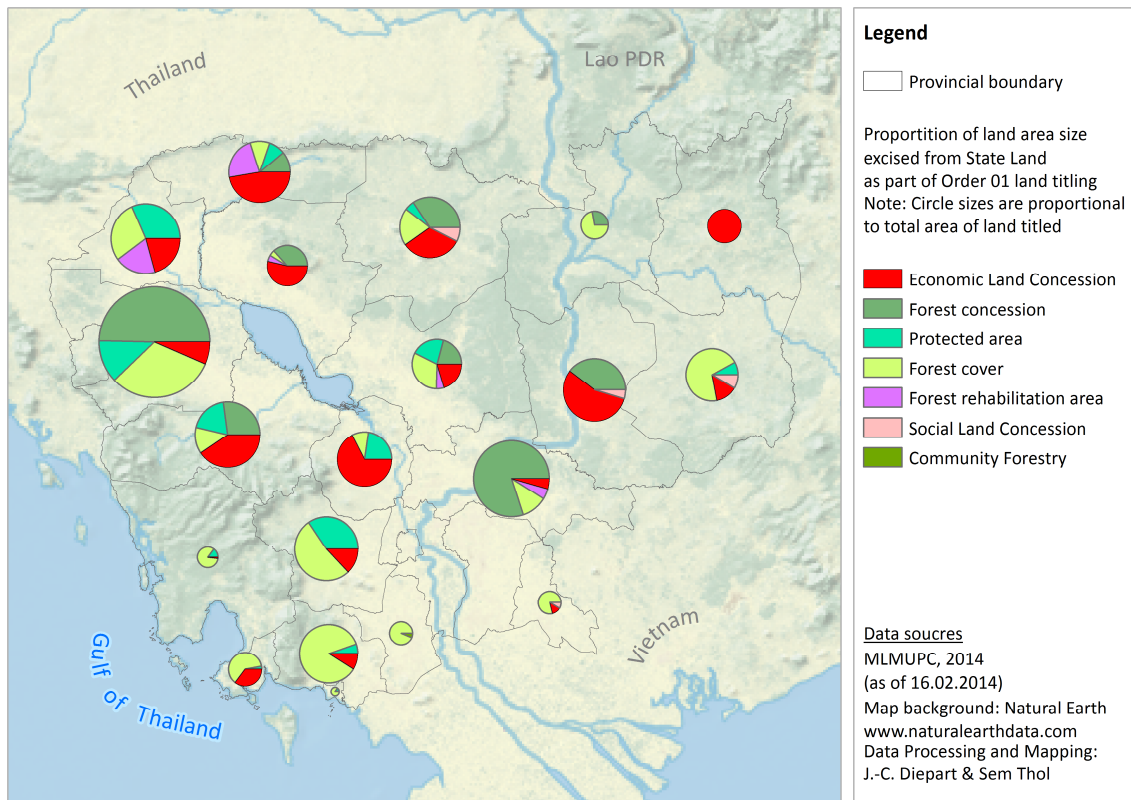


Figure 10 – Distribution of land excised from State land under the Order 01 land titling scheme

(Sources: MLMUPC, 2014 Data processing: Authors)

More detailed data computation reveals that, in total, 9.9 percent of ELCs, 3 percent of Protected Areas and 8.5 percent of un-categorised Forest Cover were excised and converted by donation into private ownership (Annex 4).

A more spatially differentiated view on the outreach of Order 01 titling reveals important differences between provinces (Map 8) that can be attributed to several elements. These include the importance of human resource mobilisation in each area, the initial endowment in State land where the titling processes could take place¹⁸, the magnitude of migration processes and the importance of the migratory population that had appropriated State land, along with the skill and efficiency of the titling team on the ground and also the possible intervention of well-connected concessionaires to limit the scope of titling efforts within their areas. These irregularities and the overall lack of transparency of the whole campaign were widely documented in the press during the titling process (Boyle and Titthara 2012a; Dene-Hern 2013).



Map 8 – Proportion of land excised from State land under Order 01 land titling

2.3 Evaluation of Economic Land Concessions

In addition to the moratorium on new concessions and the land titling campaign described above, the Order 01 initiated a full review of existing ELCs in an effort to discover which companies were in violation of the contract they signed with the government. A contract typically requires the

18 Basic correlation shows that there is a positive correlation between ELCs and area titles in ELCs ($r^2=0.57$)

companies to properly demarcate their land, sort out social conflicts peacefully, and effectively operate their ELCs within one year of their approved master plan. Since Order 01 was issued, there has been a real effort by the government to improve the management of ELCs in the country. And, in fact, the work conducted under this reform is ongoing.

To capture the development of ELC reform in the aftermath of Order 01, we computed the tracking of area change carried out by Open Development Cambodia (ODC). The computation indicates that 131 ELCs do not appear to have been adjusted while 126 ELCs have been revised implying a total area decrease of 779,338 ha. This includes 96 ELCs that have been downsized by a total of 620,667 ha and 30 ELCs that have simply been revoked (158,671 ha). As a result, after the Order 01 reform, the total number of ELC contracts amounts to 227, covering a total area of 1,225,254 ha (1,598,165 ha based on geographic attributes). The figure is quasi equivalent to MAFF's official data reporting 229 active ELC projects covering a total area of 1,220,000 ha (Table 3). The difference is probably due to the fact that ODC data might have missed the latest legal documents of the ELC evaluation and ongoing registration of State land.

	Agro-industrial Plantation before Order 01			Reduction of area during Order 01	Agro-industrial plantations after Order 01		
	Number *	In contract*	On ground*		Number	In contract	On ground
ELC	257	2,004,592	2,407,831	779,338	227	1,225,254	1,628,493
Non ELC	29	183,821	186,140	7,524	28	176,297	178,616
Total	286	2,188,413	2,593,971	786,862	255	1,401,551	1,807,109

Table 3 – Number and area of large-scale agricultural plantations after Order 01

*: The figures may include plantations that are double-counted (area and size).

Following the ELC cancellations, there was a question regarding how these should be managed in the future. A particular point of concern revolved around the extent to which cancelled areas would be maintained as State Land (thus allocated to other State-managed functions) or redistributed to smallholder farmers. There were some studies and interests to stimulate the discussions about State Land Management and the policies to address these competing interests, but it was somehow explicit that the MoE would transfer the remaining active ELCs only to MAFF while the cancelled ELCs inside Protected Areas would remain under the MoE's jurisdiction for conservation. Furthermore, MAFF was instructed to implement a reforestation programme on the cancelled ELCs under its jurisdiction. Also, unpublished case studies by the NGO Forum (Ung 2017) and Mekong Region Land Governance (Ngin *et al.* 2017) have shown that parts of these cancelled ELC areas were being occupied by smallholders and other private land users. This still indicates competition for land between smallholders and State managed functions.

> Outcomes

Order 01 has considerably reshaped relationships between land and people in the Cambodian uplands. However, it is still too early to draw any general conclusions about the outcomes and impacts of the Order 01 land titling schemes. Instead, we propose to identify relevant themes or to formulate a number of relevant questions for further research.

> *State formation*

The land titling initiative can be seen as an attempt by the central State to regain control over territories where it has been traditionally weak. The fixing of boundaries and delimitation of land use patterns through titling can be seen here as a State-driven exercise to better control its periphery.

What are yet to be understood are the institutional consequences of the emergence of the central State in the local territorial affairs of the periphery. The intervention of the central State through titling might reconfigure the balances of power in the uplands and possibly lead to conflicts between central level and local level State formation processes.

> *Commodification and land [in] security*

Comprehensive land titling efforts can also be seen as a further step towards the commodification of land in the uplands and the privatisation of the commons. These efforts promote private property rights as a legitimate alternative land right in areas where collective arrangements of the commons have prevailed throughout history. A point of interest is to identify and understand the responses by communities to maintain and protect common property rights.

It has already been shown that the introduction of private land titles as alternatives to communal land titles in Northeast Cambodia has created an institutional schism within communities between those supporting the communal ownership and those opting for private land titles (Milne 2013).

The main issue of land insecurity on State land has been addressed by Order 01 by what Dwyer (2015) calls the 'formalization fix'. But a fundamental question underlying the land titling process is whether land titling does enhance land security and, if so, how this security differs from the land security institutions established before titling occurred. The examination of this process implies looking at the tenure security of land located inside and outside the adjudication area. Titling of private land is instrumental to the delineation of the land that is not privatised and which then becomes a *de facto* fixed State asset. By implication, land security provided on land in the adjudication area might reduce land tenure security in areas outside of it that were subjected to local recognition and pluralism in tenure (Hirsch 2011). This issue of security can be spatially differentiated according to areas where the concession activities are in full swing or where the concession is not [yet] active.

The titling process has proved to be largely incomplete and large areas appropriated by people have been left untitled (Grimsditch and Schoenberger 2015). This incompleteness of land titling in areas where people live and/or cultivate might legitimate the concessionaires or Protected Area authorities to force/evict those people from the delineated land.

> *Socio-economic and spatial development*

A set of questions might emerge from an examination of the systemic interaction between land security [or lack thereof] created in the uplands as a result of this new formalisation of land rights and the current socio-economic differentiation process, for instance through activating and consolidating a land market (Diepart and Sem 2018).

The actual implementation of titling and the formalisation of land property rights might further reshape labour relationships between companies and local people, for instance by providing new wage labour opportunities. New development opportunities or constraints might also come from new investors who want to take advantage of titling efforts to grab land and develop small-scale agro-industrial enterprises in conjunction with, or separate from, those activities undertaken on ELCs.

> *Spatial planning*

The spatial dimension of these recent territorial developments is also important. The formalisation of land property rights will inevitably result in the official recognition of new administrative entities in the uplands (villages, communes and districts). These rights will generate or exacerbate demands for settlements, physical infrastructure (transport, energy, irrigation, and so on) and social services (such as education and health) that will need to be articulated through spatially-explicit development strategies.

CONCLUSION: SPATIALLY DIFFERENTIATED LAND TENURE REGIMES

Current land tenure regimes in Cambodia are spatially differentiated and institutionally fragmented between lowland central plains and peripheral uplands. These divisions have yielded contradictory and problematic results.

In the lowland areas, the current trends to modernise land property rights through land titling and the promotion of land markets is quite at odds with the historically rooted institutions of peasants to acquire land 'by the plough' and to seek land security of tenure predominantly through recognition of possession rights legitimised by local authorities through local institutions. We have argued that land titling has not radically changed the security of tenure in the central plains, and that the uncontrolled recourse to market for land transactions has exacerbated the private enclosure of land and disembedded land from its social fabric.

In the uplands, land reforms have been mostly implemented in a context of post-war political economy fuelled by the extraction of natural resources. The allocation of forest concessions and later of agro-industrial concessions by the State has overwritten local land management rules and institutions and has considerably undermined the security of peasants' land tenure. Furthermore, the existing State land management instruments, such as Social Land Concessions, communal land titling or forestry/fisheries resources co-management, are far too weak to really address the power issues at stake in these upland areas.

This differentiation of land tenure systems between upland and lowland regions is actually sealed in the 2001 Land Law, which restricts legal land possession to land occupied before 2001. In a context of high demographic increase and limited opportunity to intensify production, these legal dispositions have marginalised the peasant population who are expanding their land-holdings.

The central shortcoming of the current land reform is its failure to articulate the processes of land rights formalisation in lowland and upland areas, although both regions are closely linked through land-driven migration movements that have intensified over the past 20 years. These migratory movements have contributed to a significant redistribution of the rural population between lowland and uplands.

The recent attempts by the government to address this systemic land insecurity in the uplands have shown that political will can lead to concrete results. However, the incompleteness of the land titling process has left large areas untitled and has created new forms of land tenure fragmentation in the uplands, which are not being addressed.

In order for land access for peasants to be more secure, greater attention should perhaps be given to articulating different land tenure regimes in ways that bring peasant movements and migration back to the centre of the debate.

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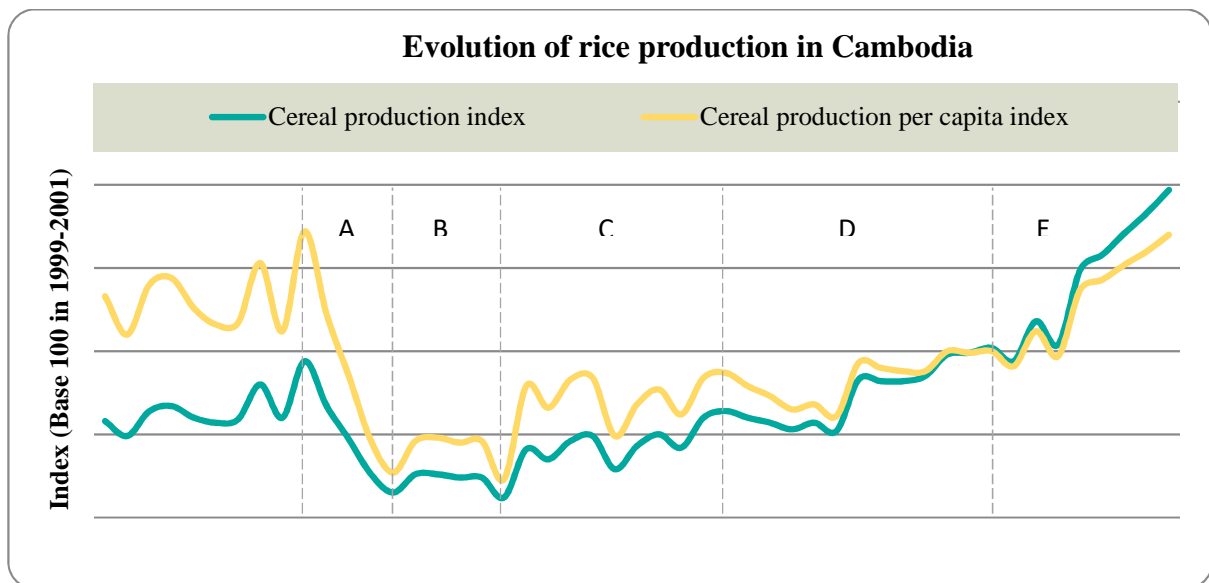
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Annex 1

Evolution of rice production in Cambodia



Source: FAO STAT, <http://www.fao.org/corp/statistics/en/>
[accessed in January 2010]

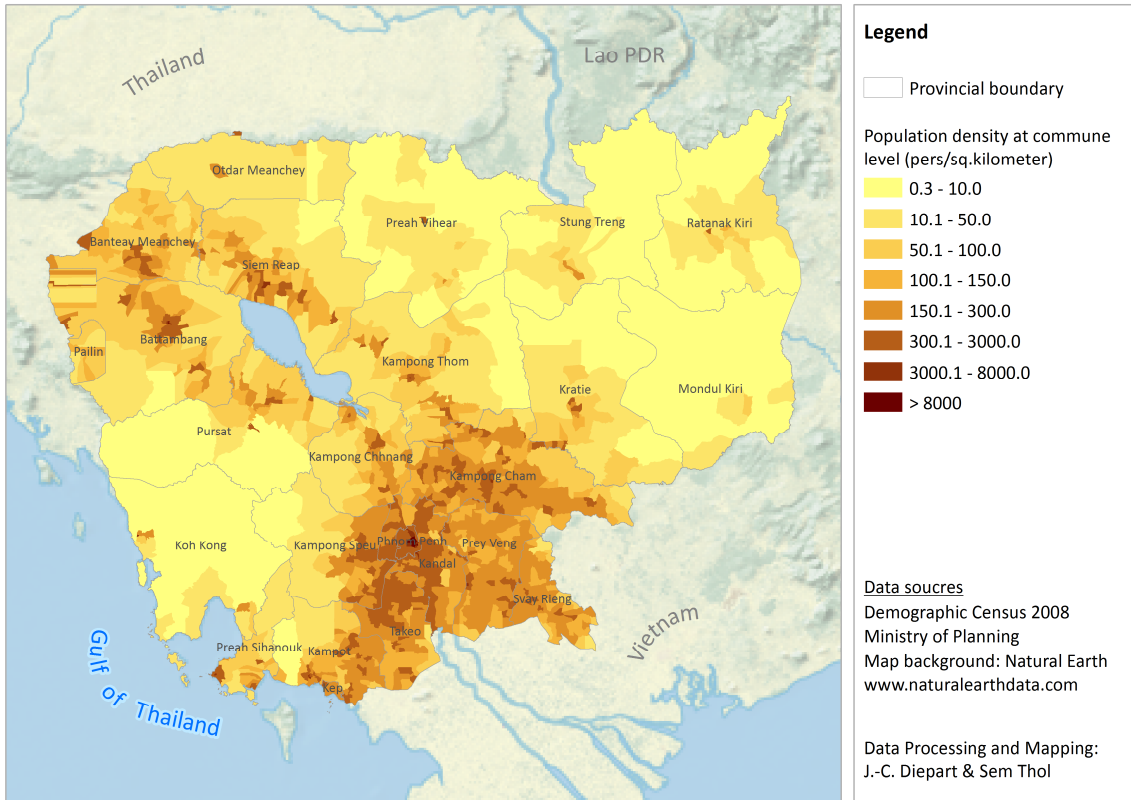
- A: Bombing and civil war, huge drop in rice production and destruction of agricultural infrastructure + livestock.
- B: Modernisation of rice production by KR a failure: weak performance with huge human costs.
- C: *Krom Samaki* (soft collectivisation) (peasants are real drivers of the reconstruction).
- D: 1990s: peasant-driven reconversion of land left fallow during war + territorial expansion into marginal land.
- E: 2000s: peasant-driven intensification of production (rainy and dry season rice).

Annex 2

Demographic indicators 1998-2008

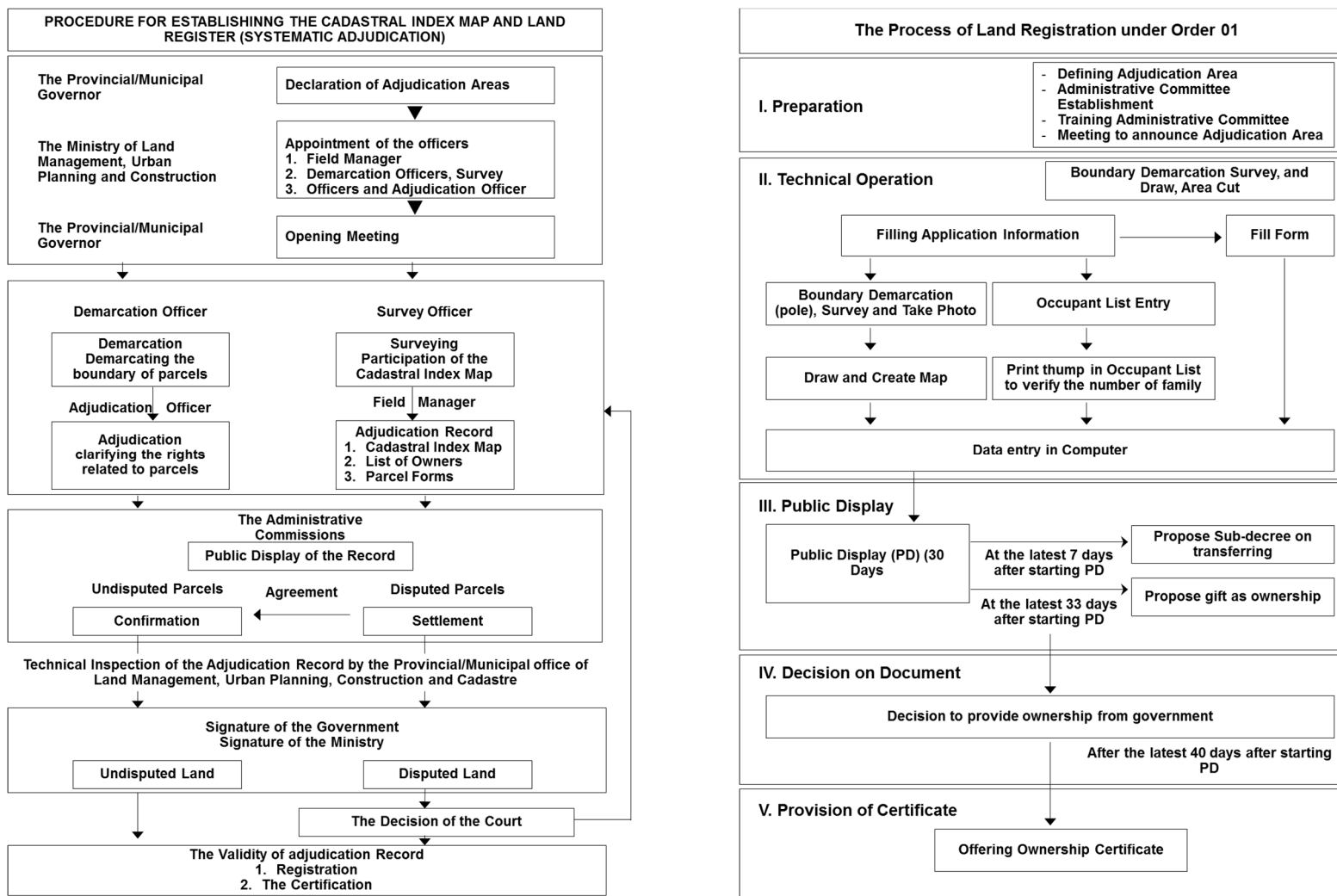
		Population (people count)						Population Density (people/km ²)		Annual Growth Rate (1998-2008) (%/year)
		1998			2008			1998	2008	
		Total	Rural	Urban	Total	Rural	Urban			
Cambodia		11,437,656	81.7%	18.3%	13,395,682	80.5%	19.5%	64	75	1.54
Plain Region	Kampong Cham	1,608,914	92.7%	7.3%	1,679,992	93.0%	7.0%	164	171	0.43
	Kandal	1,075,125	86.4%	13.6%	1,265,280	84.5%	15.5%	302	355	1.62
	Phnom Penh	999,804	4.9%	95.1%	1,327,615	6.4%	93.6%	3,401	4,516	2.83
	Prey Veng	946,042	96.3%	3.7%	947,372	96.5%	3.5%	194	194	0.01
	Svay Rieng	478,252	96.4%	3.6%	482,788	96.5%	3.5%	161	163	0.09
	Takeo	790,168	98.3%	1.7%	844,906	98.3%	1.7%	222	237	0.66
Tonle Sap Region	Banteay Meanchey	577,772	76.6%	23.4%	677,872	73.2%	26.8%	87	101	1.56
	Battambang	793,129	77.7%	22.3%	1,025,174	82.4%	17.6%	68	88	2.28
	Kampong Chhnang	417,693	90.0%	10.0%	472,341	90.9%	9.1%	76	86	1.22
	Kampong Thom	569,060	94.5%	5.5%	631,409	95.0%	5.0%	41	46	1.03
	Pursat	360,445	92.5%	7.5%	397,161	93.5%	6.5%	28	31	0.69
	Siem Reap	696,164	85.2%	14.8%	896,443	80.6%	19.4%	68	87	2.52
	Oddar Meanchey	68,279	82.3%	17.7%	185,819	89.9%	10.1%	11	30	8.64
	Pailin	22,906	62.8%	37.2%	70,486	77.8%	22.2%	29	88	11.24
Coastal Region	Kampot	528,405	91.4%	8.6%	585,850	91.8%	8.2%	108	120	1.03
	Koh Kong	116,061	64.0%	36.0%	117,481	69.3%	30.7%	12	12	0.12
	Preah Sihanouk	171,735	61.1%	38.9%	221,396	59.6%	40.4%	89	114	2.54
	Kep	28,660	86.0%	14.0%	35,753	86.9%	13.1%	85	106	2.21
Mountain Region	Kampong Speu	598,882	92.0%	8.0%	716,944	92.4%	7.6%	85	102	1.79
	Kratie	263,175	86.2%	13.8%	319,217	88.7%	11.3%	24	29	1.93
	Mondulkiri	32,407	91.6%	8.4%	61,107	92.0%	8.0%	2	4	6.34
	Preah Vihear	119,261	93.4%	6.6%	171,139	93.8%	6.2%	9	12	3.61
	Ratanakiri	94,243	88.1%	11.9%	150,466	87.2%	12.8%	9	14	4.67
	Stung Treng	81,074	81.3%	18.7%	111,671	84.8%	15.2%	7	10	3.2

Source: Demographic census report (NIS 2009).



Population density per commune as of 2008

Annex 3. Processes of land registration under cadastral index map (left) and Order 01 (right) (adapted from Sourn, 2014)



Annex 4. Size distribution of land excised from State Land under Order 01 land titling scheme

(Sources: MLMUPC, 2014 and GIS database. Data processing: Authors.)

	Economic Land Concession		Protected Area		Forest Concession		Forest Cover		Forest Rehabilitation	CF			SLC		Total land area excised under Order 01 land titling	
	Total area	% area with titles issued	Total area	% area with titles issued	Total area	% area with titles issued	Total area	% area with titles issued	Area size with titles issued	Area size with titles issued	Area size with titles issued	Total Land area size	Area size of land donated (titled)	Number beneficiaries HH	Reserved Land	
Banteay Meanchey	17,448	94.7%	57,753	44.0%	0		106,871	21.3%	15,521	0	0	80,234	77,057	22,011	3,177	
Battambang	20,196	66.8%	210,931	12.3%	0		422,665	15.4%	0	0	0	207,670	203,714	55,478	3,956	
Kampong Cham	66,044	6.5%	0		35,996	NA	121,788	8.8%	4,315	0	0	96,866	96,866	34,728	0	
Kampong Chhnang	172,223	19.7%	57,465	19.8%	0		57,509	8.8%	0	0	0	50,390	47,076	23,339	3,314	
Kampong Speu	125,821	7.0%	138,880	16.9%	0		185,451	19.2%	0	0	0	67,944	58,473	30,253	9,471	
Kampong Thom	133,576	6.2%	142,937	6.3%	199,365	4.3%	278,712	4.7%	2,094	0	0	40,928	38,196	10,306	2,732	
Kampot	62,433	8.0%	85,494	3.5%	0		98,591	49.5%	0	0	0	56,851	49,004	27,294	7,847	
Kandal	0		0		0		31,467	0.0%	0	0	0	0	0	0	0	
Koh Kong	159,032	0.1%	566,312	0.2%	218,662	0.0%	217,508	2.8%	0	0	0	7,218	6,593	2,108	625	
Kratie	456,350	7.9%	42,975	0.0%	227,313	11.3%	339,562	0.0%	543	0	2,906	65,157	60,937	17,129	4,219	
Monduliri	206,433	3.0%	883,363	0.4%	0		221,117	14.4%	0	4	3,868	45,421	42,085	12,014	3,336	
Phnom Penh	0		0		0		0		0	0	0	0	0	0	0	
Preah Vihear	223,814	9.0%	488,201	0.7%	418,089	5.0%	216,304	5.6%	0	0	4,510	60,880	56,972	17,886	3,909	
Prey Veang	0		0		0		9,656	0.0%	0	0	0	0	0	0	0	
Pursat	173,764	16.6%	540,191	2.5%	10,107	NA	236,628	3.9%	0	0	0	71,211	54,514	19,090	16,697	
Rotanak Kiri	284,464	6.7%	429,387	0.0%	91,829	0.0%	254,254	0.0%	0	0	0	18,926	16,459	3,214	2,468	
Siem Reap	51,881	28.3%	204,861	0.0%	221,109	4.5%	174,110	0.7%	1,348	0	0	27,350	24,676	7,174	2,674	
Preah Sihanouk	22,027	29.8%	33,688	1.7%	0		50,897	22.4%	0	0	0	18,522	18,522	5,478	0	
Stueng Traeng	274,388	0.0%	98,949	0.0%	570,519	0.6%	192,528	4.7%	0	0	0	12,649	10,915	3,104	1,734	
Svay Rieng	5,291	21.2%	0		0		8,809	78.4%	0	0	732	8,763	8,302	5,601	460	
Takao	0		10,689	0.0%	0		27,608	30.8%	0	550	0	9,043	7,357	7,037	1,686	
Oddar Meanchey	92,203	32.5%	145,575	3.7%	43,301	16.1%	276,232	2.4%	14,277	0	0	63,275	49,020	13,500	14,255	
Kep	0		2,795	6.1%	0		3,397	28.2%	0	0	0	1,130	1,109	700	21	
Pailin	22	0.0%	40,163	0.0%	0		53,629	0.0%	0	0	0	0	0	0	0	
TOTAL	2,547,414	9.9%	4,180,610	3.0%	2,036,289	13.5%	3,585,293	8.5%	38,097	555	12,015	1,010,429	927,849	317,444	82,580	

