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# The fragmentation of land tenure systems in Cambodia: peasants and the formalization of land rights

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## THE FRAGMENTATION OF LAND TENURE SYSTEMS IN CAMBODIA: PEASANTS AND THE FORMALIZATION OF LAND RIGHTS

**I**n Cambodia, land and natural resources occupy a central place in the production systems of peasants who represent about 80 percent of the country's population. The development and governance of socio-ecological systems trigger considerable economic, social and environmental issues that need to be addressed urgently given the profound nature of the transformations at play in these systems across Cambodia.

Against the background of Cambodian peasant conceptions of, and approaches towards, land tenure security, we present the historical evolution of, and current challenges presented by, various land reforms that have attempted to formalize the land property rights system in the Kingdom. We suggest that current land tenure regimes in Cambodia are highly fragmented between lowland central plains and peripheral uplands, which has yielded problematic results. We discuss the attempts by the government to address the ensuing contradictions.

### THE LAND AND PEOPLE OF CAMBODIA AT A GLANCE

The Kingdom of Cambodia is located in the southern portion of the Indochina peninsula in Southeast Asia. Its 181,035 square kilometres are bordered by Thailand to the Northwest, Laos to the Northeast, and Vietnam to the East. On the fourth and open side, Cambodia faces the Gulf of Thailand.

Topographically, the country resembles a shallow volcano. Forming the rim, two ranges of mountain—Cardamom and Elephant—follow the Thai border. In the Northeast, the land rises to a plateau up to the borders with Laos and Vietnam. These mountains and plateau are mostly forested. Inside the rim is a lowland area connecting the Tonle Sap Great Lake plain with the Mekong alluvial plain. Both the Tonle Sap and Mekong Rivers cross streams in Phnom Penh, the capital city.

According to the 2008 demographic census the Cambodian population figure at the time was 13,395,682 of whom 48.6 percent were male (National Institute of Statistics 2009). Between 1998 and 2008 the annual growth rate of the population was 1.54 percent, which was higher than that of other countries in Southeast Asia. Historically, the Cambodian population has been concentrated in lowland areas around the Tonle Sap Great Lake and the Mekong River. These regions have the highest population figures and are the most densely populated regions in the country (Map 1). The urbanization, measured as a percentage of the population living in urban areas<sup>1</sup> to the total population, has increased from 18.3 in 1998 to 19.5 in 2008 (National Institute of Statistics 2012). This means that the vast majority of the population remain rural.

The overwhelming majority of the population are of Khmer ethnicity (96.3 percent). The most important ethnic minorities are Vietnamese (1.5 percent of the population) and Cham (0.5 percent). The proportion of indigenous people is generally reckoned to range from 1 to 1.7 percent of the population as a whole and they mostly live in the Northeast plateau area where they practise swidden agriculture.

Cambodia remains one of Asia's poorest countries but has witnessed dynamic and sustained growth over the past two decades. Amidst a challenging global economic environment, the annual gross domestic product (GDP) growth rate between 2005 and 2013 was 7.6 percent<sup>2</sup>. Agriculture is a central pillar of the economy representing 35.6 percent of the GDP structure in 2012<sup>3</sup> and providing the main employment for 51 percent of the national labour force<sup>4</sup>. The other important sectors are the garment industry (16 percent of GDP) and services (mainly construction and tourism) accounting for 40.1 percent of GDP in 2012.

1. Urban areas are designated according to criteria set by the National Institute of Statistics and have the following characteristics: (i) population density exceeding 200 per km<sup>2</sup>, (ii) percentage of male employment in agriculture below 50 percent and (iii) total population of each commune exceeding 2,000 people.

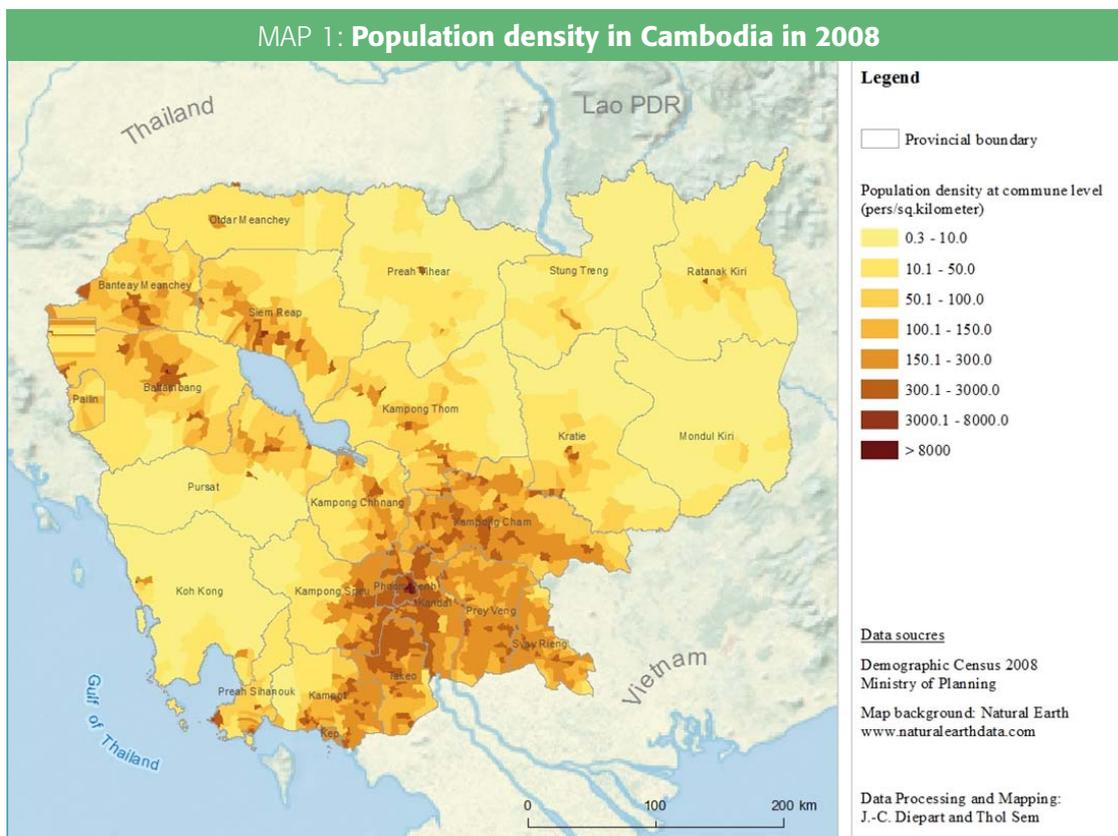
2. <http://databank.worldbank.org/data/views/reports/tableview.aspx>

3. <http://databank.worldbank.org/data/views/reports/tableview.aspx>

4. <http://data.worldbank.org/indicator/SL.AGR.EMPL.ZS/countries/KH?display=graph>



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The demographic increase and, in particular, the effects of the post-war baby boom, have resulted in an annual labour force increase estimated at 220,000 to 300,000 people (Chan 2009; Lundström and Ronnas 2006). Agriculture has reached a limit in its capacity to absorb newcomers in the job market, so the creation of viable and productive jobs in the farm and non-farm sector is key. But this 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).

Although poverty in Cambodia has fallen sharply, the poverty rate in 2012 was still considerable, at 18.6 percent, with almost 3 million poor people and more than 8.1 million who are in the “near-poor” bracket. About 90 percent of these poor and near-poor people live in the countryside. The actual gap between the rich and the poor has increased in absolute terms, and the majority of households that have escaped poverty have done so by only a small margin—they remain highly vulnerable to falling back into poverty (World Bank 2013).

In a context of rampant rural poverty, constrained agrarian transition and low public investment in agriculture, the pressure on agriculture and on the peasants is immense. The sector needs to address the increase in the rural population, the food consumption diversification of the urban population—which has grown proportionally faster—and to generate surplus rice for export.

Agricultural production is predominantly carried out by household-scale exploitation. As of 2013, 85 percent of the total number of households were engaged in some form of agricultural-related activities, and 72 percent of the total number of households in Cambodia managed a so-called agricultural holding<sup>5</sup>, covering a total land area size of 3.1 million hectares. The average agricultural land size per farming household is 1.6 ha (National Institute of Statistics 2014). Among households with

5. An economic unit under single management comprising at least two large livestock animals and/or at least three small livestock animals and/or at least 25 poultry of any kind and/or land with a size of at least 300 square meters, used wholly or partly for agricultural production purposes regardless of title, legal form or size.



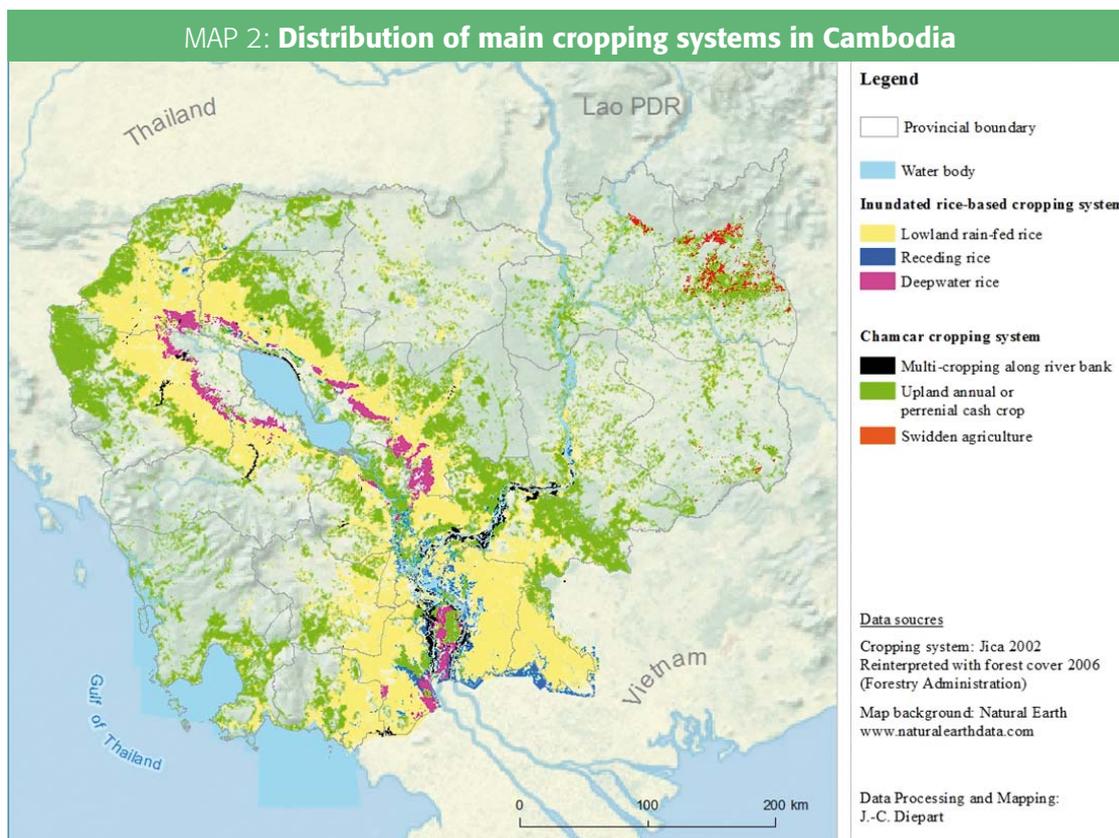


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agricultural holdings, 73 percent are engaged in agriculture mainly to meet their personal consumption needs. The percentage of agricultural landless households was 29 in 2011 (Phann *et al.* 2015).

Two main types of cropping systems can be identified in Cambodia: the inundated rice-based, and *chamcar*-based (non-rice) systems (Map 2). Inundated rice-based systems are adapted to the specific agro-ecological conditions of the lowland plain and are marked by the seasonal flood (and recession) of flood water coming from the Mekong River. The rain-fed rice systems cover the largest cropping area in Cambodia and have been the target of many investment initiatives to develop irrigation infrastructure. The receding rice varieties are cultivated in the dry season when the flood water recedes. The third main rice system exists in the vast deep-water rice zone bordering the Tonle Sap floodplain (Pillot 2007).

The second main type of cropping system groups all non-inundated rice crops under the theme *chamcar*. It encompasses the forms of intensive multi-cropping conducted along the main river banks, the swidden agriculture prevalent in the Northeast plateau, and the ever-expanding upland annual or perennial cash crop systems.



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



## The way Khmer peasants have traditionally perceived and appropriated land

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 appropriation “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). If a farmer stops cultivating his plot of land for three consecutive years, he loses his *de facto* possession rights to the plot which then becomes available for somebody else. In a context in which demographic pressure on land was low and the country was endowed with a large land “reserve”, this regime of “by the plough” land appropriation allowed farmers an important freedom of movement over the territory (Greve 1993). However, in order to place rice production and labour under the effective control of the state, a royal tax of 10 percent was levied on rice production (Chandler 1998). The *chovay srok*—provincial or district governors—were authorized to collect taxes from their *srok* (province/district), from which they could also mobilize labour for warfare or public works. Access to manpower and rice meant that in practice the *chovay srok* had considerable power in the Kingdom (Chandler 1998; Rungswasdisab 1995).

Rice production has been 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 natural resources on “commons”, which individual farmers co-manage with others. The Tonle Sap floodplain is a rich fisheries domain but is characterized by continually changing land use patterns ranging from rice cultivation, grasslands used for grazing cattle, and shrub land where a variety of non-timber forest products are harvested. This diversity of land use is maintained through a variety of practices 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 2007; Roberts 2011). In riparian villages forests have a central role in providing a high diversity of timber and non-timber products.

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 Khmer rural communities the central decision-making institution in land and natural resources is the household and traditionally this is not dictated to by a superior community-based organisation. The local economy results primarily from strategic decisions made by households who try to maximize their interests. It is the coordination of those 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 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 consists of a consistent hierarchical social structure characterized 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



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history and remain a key social organizing factor in contemporary Cambodia. Patronage is exercised and produced in specific fields of power including political-administrative (dominated by local authorities). In the land sector, the social consensus that recognizes occupation of land was formed under the authority of the village or commune chief. Other patronage fields comprise the economic networks structured around those who control the provision of agricultural inputs, the commercialization of outputs 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. Patrons are dominant, and, as such, from a peasant perspective, they direct activity, thereby providing 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 liberalization of the economy. This is resulting in fragile links and weak trust between the communities and the public institutions that often collude with private investors.

Another important feature of collective action (and conflict resolution) are 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, access to 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 nurture dialogue for collective action (Aschmoneit 1995; 1998; Pellini 2007). 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 (Diepart 2010).



### Modernization of the land tenure regime during the French protectorate (1863-1953)

The notion of private land ownership and the modernization 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. The French introduced land titles and a department of cadastre to oversee both technical instruments and administrative procedures in land registration.

The modernization of land property rights consists 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 utilization of the land tenure is embedded locally through the recognition by social consensus formed under the authority of the village and commune chiefs. In contrast, ownership rights are definitive and inalienable. The transformation of possession to ownership rights rests on the premise that ownership rights give more security and incentives to farmers and investors to use the land more efficiently, and it 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 that followed two distinct procedures and involved two categories of actors:

1. the registration of land as fixed asset (equivalent to a possession (*paukeas*) certificate) was based on peaceful and at least a five-year occupation of a plot of land overseen by the commune chief (*Me Khum*) who acted as the certifying officer;
2. on that basis, the land title and transfer of the ownership right could be delivered, but this procedure required a written property transfer and registration from the cadastral office.

The difference between possession and ownership was not clear because farmers usually had full land tenure security by local recognition of the possession. In addition, the delivery of title needed to be conducted by a more distant administration which they did not necessarily trust.

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 both the local authorities and the Cambodian peasants because land titles meant the imposition of tax, which they were not willing to pay. This largely 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 titled. Nevertheless, appropriation "by the plough" remained the norm across the country.

The new tax system obliged the peasants to pay a certain percentage of their production in cash, and thus compelled them to engage in the market economy by selling part of their production. This cash economy created usury credit systems and resulted in widespread indebtedness among peasants (Thion 1993). Combined with the development of land markets, indebtedness led to land dispossession by mortgage or sale and the emergence of landlessness, the land lease and the creation of agricultural wage labour (Kiernan and Boua 1982).

In 1899, the French army provided Cambodia with a rudimentary forest administration, placed under the forest service of Cochinchina. 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*". This was a clear attempt to substitute small-scale indigenous forest use with large-scale entrepreneurial exploitation (Thomas 1999) and represents the beginning of the concession system in Cambodia. As part of this, Cambodians were denied access to these forests (Gouvernement Général d'Indochine 1910) which also meant a drastic reduction in grazing herds.

Land concessions for plantation agriculture were an important tool of French colonization in Indochina, particularly in southern Vietnam but also in Cambodia. The first rubber plantation in Cam-



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bodia, the Chup Plantation, was established by the French in 1921 and was at one time the largest rubber plantation in the world (Slocomb 2007). By the 1930s, less than a decade after land was first granted to French investors, rubber was the third largest export from Cambodia. Commentators writing during this period made claim that the large rubber plantations “marked the beginning of capitalist colonisation in Indochina” (Virginia Thompson 1937 cited in Slocomb 2007).

The establishment of forest reserves and rubber plantations, 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; Hu 1965; Khieu 1959).

### Post-independence and the persistence of French rules (1953-1975)

King Norodom Sihanouk, the father of independence in 1953, abdicated in 1955 to take the post of prime minister of the Kingdom. His politics did not challenge land and forest tenure arrangements previously established by the French. Concessions were nationalized but 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.

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 the norm (Kiernan 2004). This period was also characterized by the continuation of land inequality in Cambodia. 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).

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, utilized, and claimed through the customary arrangements that had 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.

A crucial stimulus of the peasants’ revolt, which took place in 1967 in Samlaut (which lies in the north of the Cardamom Mountains), was land grabs. Powerful government and military officials manipulated the legal system and sought to invalidate undocumented ownership by issuing to themselves titles to the land that had been cleared by local villagers. The revolt was quelled through repression. Many people who were involved in the revolt took refuge in the forests where a small group of communist insurgents was hiding (Kiernan 1982; Thion 1993). Among them was the Khmer Rouge (KR), a group of communist revolutionaries who were piloting collectivized farming in the areas under their control.

1970, the Khmer Republic was declared after King Sihanouk was dethroned by a military *coup d’Etat* fomented by General Lon Nol with support from the US. Sihanouk and the royal family were exiled and the entire royal entourage was dismissed. Private property rights as such continued to be recognized under the Khmer Republic (Greve 1993). This period of Cambodian history became plagued with corruption and tensions between the peasantry and the ruling authority were exacerbated, thus paving the way to dominance by the Khmer Rouge.

### The Democratic Kampuchea experience and the imposition of collectivization (1975-1979)

The modernization 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, nationalized the entire agricultural domain and collectivized all



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means of production. Labour was organized within collective production groups to which individuals were conscripted. The production surplus was exported to China against goods and weapons. The urban population living in the *kampong* (urban centre) 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 brought to a complete stop. These new forms of appropriation of space and the underlying social relations radically transformed rural territories and, indeed, the entire society: the DK regime is notorious for committing human atrocities including the extermination of 1 to 2 million people

### ***Krom Samaki* and the collectivization of the peasants (1979-1989)**

The Vietnamese intervention in Cambodia in late 1978 led to the collapse of DK rule in Cambodia except in the Northwest where it simply marked the beginning of their resistance activity. The new government of the People's Republic of Kampuchea (PRK) was formed from early members of the Khmer Rouge who had escaped to Vietnam to avoid the purges of Pol Pot and had come back to Cambodia with the support of the Vietnamese and Soviet governments. A second group of Cambodians who formed the RPK comprised Indochinese war veteran who had fled to Vietnam after the Geneva accords in 1954 (Frings 1997).

The first months of 1979 witnessed chaos across the country. People who were displaced during the DK period migrated throughout the country in search of land, family and peace of soul 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. In the absence of any legal framework, *de facto* re-appropriation of animals and agricultural equipment that people owned before 1975 took place (Frings 1997).

Starting in May 1979, when the socio-political situation stabilized, a new unit of agricultural production, the *Krom Samaki* (namely Solidarity Group), was declared and recognized by the RPK government as the main unit of rural development (Frings 1997). A *Krom Samaki* comprised a small group of 10-15 families who used the land, agricultural equipment and draught animals collectively. Agricultural land was the property of the state but was distributed 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 (both the *Krom Samaki* officials and the village chiefs), and this gave rise to a number of divergences that contributed to initiating land differentiation beginning as early as the 1980s.

During the war, some agricultural land was abandoned and colonized 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 *Krom Samaki* officials or village chief.

The agricultural activities were meant to be conducted collectively with equipment and draught animals that were either collectively or privately owned but collectively shared with the group. 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 a move to motivate the peasants, the theoretical model of *Krom Samaki* was reformed some years after it was first put in place. Some land was given as usufruct (the right to enjoy the land without changing it) to families and, from 1982, authorities recognized the differentiation of the *Krom Samaki* model and the existence within it of three levels with differential degrees of collectivization.

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Under these differentiation forces and in the absence of a strong state to counter-balance them, *Krom Samaki* was dismantled *de facto* in the countryside in the early to mid-eighties. The rule, which was usually only a recognition of the actual de-collectivization on the ground, was that land previously allocated to each family within each *Krom Samaki* was redistributed to them. 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. But 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 amongst scholars of that period to portray the *Krom Samaki* as a complete failure (Frings 1993; So 2009). This verdict was based on the fact that the system created conflict between people who were hard-working and their lazier counterparts, that there was a lack of human resources to oversee and encourage collectivization, and that the people involved feared a political backlash from imposing strong penalties for non-compliance with collectivization directives. However, after the trauma of DK, there is little doubt that, at the time, people were not willing to embark on a new collectivization of agriculture. The social contract between the farmers and the state was unsustainable as 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, fertilizers, 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 contests and who lacked competent cadres, could not actually address them.

However the contribution of *Krom Samaki* was far from insignificant. In a post-war context of generalized starvation, ruined agricultural infrastructure, uncontrolled migration movements and international isolation, the system allowed a quick recovery of agricultural production in regions heavily destroyed by the war. Even if they were instruments of central party politics, the management



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of *Krom Samaki* were quite decentralized 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 emphasized the superiority of family farming over collective modes of agricultural production.

### Liberalization and unequal access to land (1989-2001)

At the end of the 1980s, collectivization was officially abandoned. Cambodia then embarked on a series of reforms relating to private property rights that laid the foundation for the current land reforms.

In 1989, a number of new legal provisions relevant to land were included in the constitution (Jenar 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 (*sambathian*, covering more than 5 ha, for agro-industrial development). At this stage, there was still a distinction between possession rights to agricultural and concession land, and ownership of residential land.

In order to synthesize 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 had possession rights (access, use, claim, 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 synthesize the three main land tenure regimes inherited from history: the appropriation "by the plough"; state; and private ownership (jurisdiction) promoted by the French and the socialist ideology that 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) summarizes 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. Importantly, the application required verification by both the village and commune authorities before being submitted to the district cadastral authority. Second, cadastral officials actually visited the plots to conduct technical surveys and demarcations, after which the application was forwarded for approval from different relevant authorities. This procedure, in two steps, resembles the one designed and implemented 70 years earlier under the French rule.

Again, 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) could actually be issued (Van Acker 1999). The complexity of the procedure and the clear lack of resources allocated by the state to endorse the implementation partially explain this backlog. But corruption associated with the procedure also excluded people from successfully completing the process. 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 fragmentation of the land tenure regime between possession and property rights, socially recognized and approved locally by the *Me Khum* (the commune chief), and inalienable private ownership acquired through cadastral procedure. The distinction is very important though as an ownership title can invalidate a possession certificate in the case of a conflict that goes to court (East-West Management Institute 2003). And in the context of emerging land markets and rising land value this distinction is very significant.

Access to agricultural land in the 1990s is characterized by a rising inequality in terms of agricultural landholding size, taking place through the related processes of landlessness and land concentration.



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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 people who were landless in 1960 was 4.01 percent, rising to an estimated 15 percent in 2001 (Biddulph 2000). Landlessness and land concentration are closely related to the emergence and rapid development of an active land market legitimized by the new economic reform agenda, namely economic liberalization and privatization. Land sales are usually driven by the socio-economic vulnerability of the household (distress sales). On the demand side, land purchases are triggered by two types of actors: the successful farmers who accumulate capital in the agricultural and non-agricultural sectors and buy additional land from their fellow peasants, and the emerging urban investors (Diepart 2010). 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 (Shaun 1999). In the prevailing post-war socio-economic context, the 1992 Land Law is highly problematic due to the convergence of several factors. The ability to access 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 (Cooper 2002; Guillou 2006).

### The development of a concession economy in the 1990s

In the 1990s, the concession system was reintroduced with strong support from international organizations, particularly the World Bank, and became the main tenure system for natural resource management in Cambodia. The central objective of this system was to put an end to the prevailing anarchy in forest and fisheries management by introducing a “transparent” concession system so as to generate revenues for post-war reconstruction efforts in order to create value-added products from the timber sector and stimulate local employment (Hibou 2004).

These virtuous aims were not aligned with the then prevailing political context of the 1990s, which was characterized by post-war political struggles between factions of the new governmental coalition (the Cambodia People’s Party (CPP) and Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique, et Cooperative (National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia) (FUNCINPEC) and the continued war with the Khmer Rouge (KR) in the Northwest. The reconstruction of patronage networks by each party of the new coalition seeking to control the country generated violent political struggles. The need for both parties to generate revenue intensified the recourse to grant forest, fisheries and land concessions. Indeed, the public-private partnership ideal—created by the international community to assist reconstruction—resulted in a destructive and uncontrolled privatization of state natural resources to serve the interests of political and military leaders (Global Witness 2007; McKenney and Prom 2002).

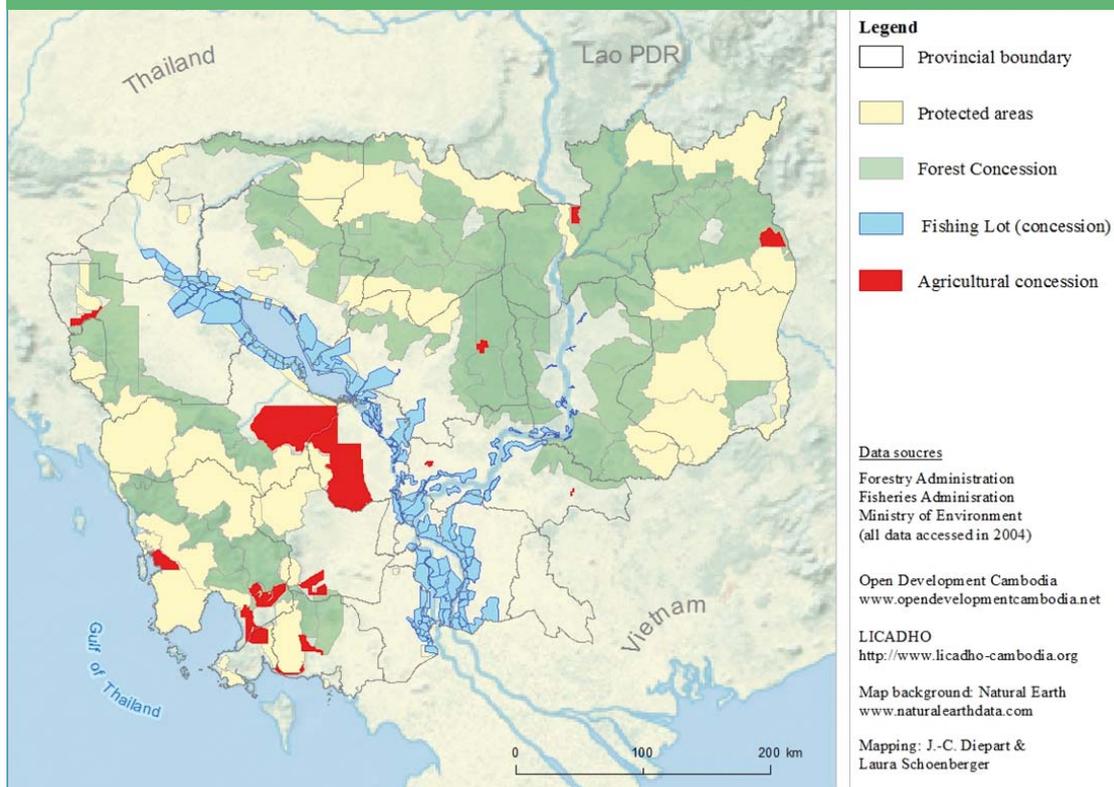
Between 1994 and 2001, 39 percent of the 180,000 square kilometres that constitute Cambodian territory was allocated to forest concessions comprising 51 areas totalling 7,084,215 hectares and covering more than half of the forest resources at that time (Save Cambodia’s Wildlife 2006) (Map 3). In the fisheries sector, the total area of the fishing concessions (fishing lots) that were auctioned was 953,740 hectares, representing 5.2 percent of Cambodian national territory (McKenney and Prom 2002). The state did not turn to granting agricultural land on a rapid and large scale until somewhat later, and yet during the 1990s the granting of agricultural concessions (palm oil, cassava, rubber, cashew and sugar cane) was already on the move. 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). All of these concessions are displayed on Map 3.

The development of a concession economy served important processes tied to the ending of the civil war and to the determination of Hun Sen—one of the coalition government’s two prime ministers—to concentrate power for himself and his political party, the CPP. First, in a move to offer alternative



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MAP 3: Forest, fisheries and agricultural concessions and Protected Areas as of the early 2000s



livelihood solutions for demobilized soldiers, both of the coalition's prime ministers allocated land to the army. In July 1994, in seven provinces, an area equivalent to 5 percent of the total Cambodian territory was allocated to the military (Degen *et al.* 2000; Global Witness 2007; Hibou 2004). Second, this concession system allowed a progressive centralization and control of power by Hun Sen 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. The entrepreneurs involved 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 suffered from major deficiencies on the part of state administrators, the concessionaires and their sub-lessees (Hibou 2004; McKenney and Prom 2002). The absence of properly allocated human and financial resources made it virtually impossible to control the activities of concessionaires on the ground. Concession contracts did not include specific forest management measures that would allow for the regeneration of species, etc. The exploitation of resources occurred not just within concession areas, but also frequently outside. There was no independent judicial system that could have conducted proper arbitration of the many conflicts.

In the 1990s, the revenue generated from concession operations was immense, particularly in the forest sector, yet only a tiny proportion reached the national treasury (Le Billon 2002). A significant fraction of these informal revenues generated by forest exploitation and trade was captured by provincial and 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





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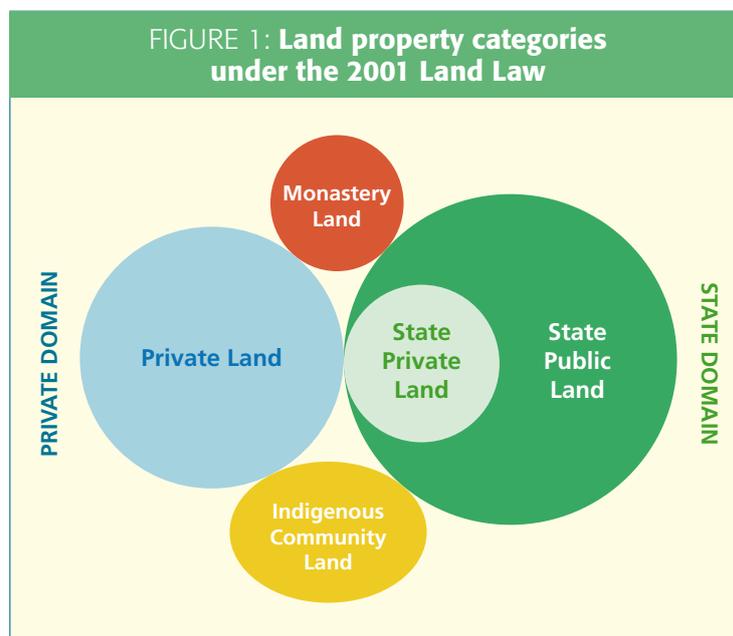
level to actually put an end to the concession system since it gave enough freedom and benefits to key sub-national actors so that no-one really questioned it. The social and territorial dynamics revolving around large concession activities—decided at the highest level of the state—allowed a variety of actors to become involved in similar processes at the sub-national level under the discretion of provincial, district or commune authorities (Diepart 2007). In the end, this process was key to the consolidation of the whole political hierarchy of the ruling party from national down to village level.

In the 1990s, this dynamic led to massive and illicit land acquisitions in the Cambodian countryside and to *de facto* privatization 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 (Diepart 2010).

## THE 2001 LAND LAW: A CORNERSTONE IN CONTEMPORARY LAND REFORMS

The 1990s had thrust the peasants into turmoil, and, in the early 2000s, land tenure management was in a deep institutional crisis. Conflicts revolving around access to, and control of, land and natural resources were rampant. In attempts to tackle those issues, the government of Cambodia first established new laws and regulations. The priority was to create a strong 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 involved in terms of rural development.

The new Land Law, promulgated in August 2001 (Royal Government of Cambodia 2001), was rooted in the first civil code adopted by the French in 1920. The Land Law differentiates between five different domains of property (Figure 1). The land continues to be owned by the state unless its ownership has been legally privatized. This privatization can happen only to 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 privatized. 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 communities have established residence and where they carry out their traditional swidden agriculture. Both monastery and commune property rights suppose collective ownership over land (East-West Management Institute 2003).

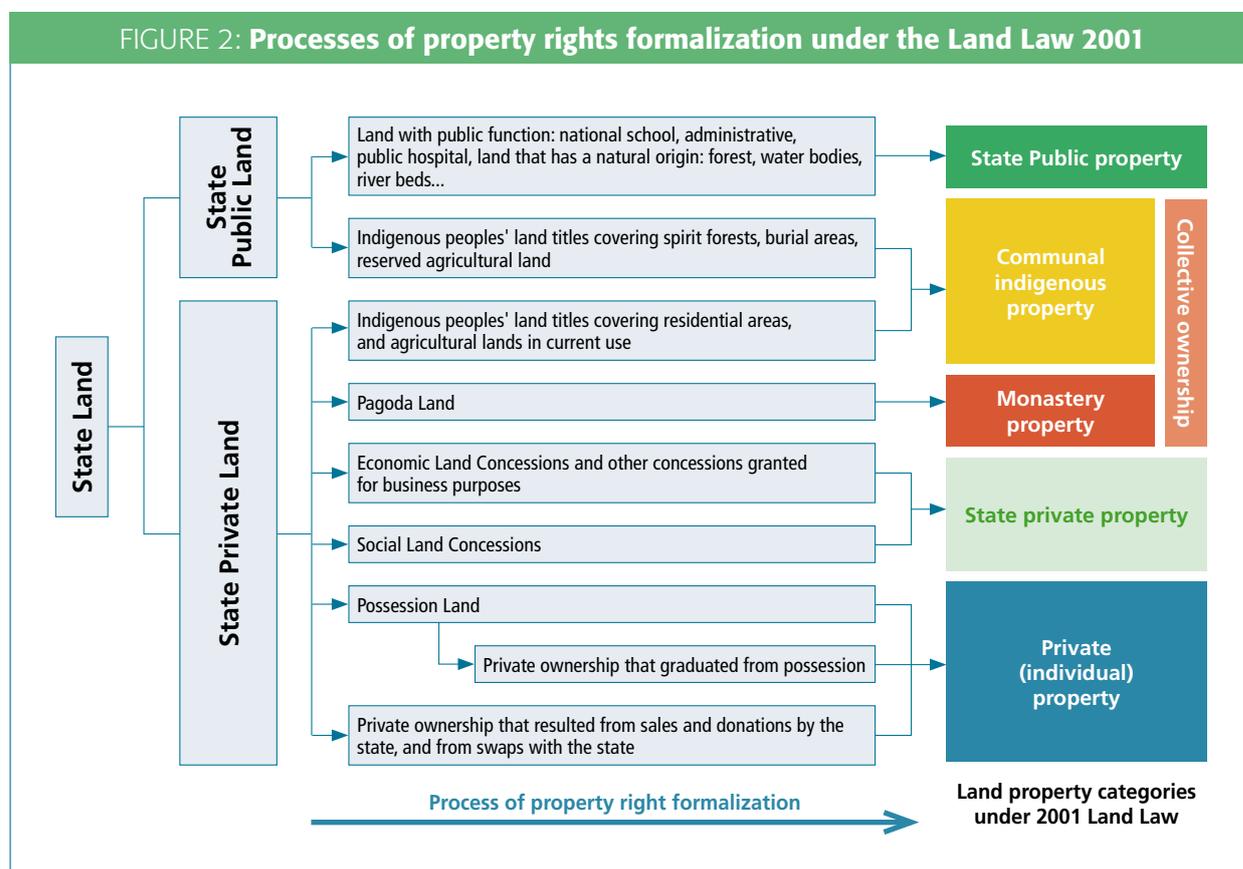


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The core objective of the reform is two-fold. First, it aims to improve tenure security and access to land through a market-based land distributive reform (relying on land titling, cadastral administration and land markets) and redistributive land reform through Social Land Concessions. Second, the reform aims to stimulate investment to improve productivity and agricultural diversity under the rubric of the “economic concession”. These elements are central in different influential World Bank strategic papers relating to Cambodia (World Bank 2007a) and, not surprisingly, in the different national development master plans (Royal Government of Cambodia 2005a; 2006a). The implementation of the Land Law embraced a number of “new” formalization processes of land property rights along paths that are summarized in Figure 2. Central to these processes is the formalization of private or collective property rights from state property (domain) and the differentiation between state private and state public land. This is highly contentious because concessions have remained a central element of state land management in Cambodia (despite the fiasco of the 1990s).

A concession is a legal right established by contract with a competent authority given to any person to occupy and use a specific piece of 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 (UDECs). UDECs are governed by a separate law.

The privatization of peasants’ land property rights, which supposes a conversion from possession to inalienable ownership right (figure 2), comprises a further problematic aspect of the 2001 Land Law. The law states that “possessors” are people who started occupation of state private land in ways that were open, peaceful, continuous, etc. Once the occupation had lasted for at least five years, the possessor was entitled to ownership. But in contrast to all preceding Cambodian laws and practices, the 2001 law 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 was no longer allowed.





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## 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 formalization processes address them.

### Land access differentiation in the central plains

In the central plains, the rising incidence of landlessness, land concentration, and atomization, and the decline of landholding size per household create big challenges for farming households (Chan and Acharya 2002; World Bank 2006; 2013). In the lowland area a growing number of households (more than 25 percent) live with less than 0.5 ha of land, which is not enough to sustain a family throughout the year (Taylor 2011).

Three processes of land access differentiation explain this situation:

- 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). Conversely, households with smaller landholdings are young households and have acquired their land mainly through inheritance, usually from elders who themselves received land from *Krom Samaki*. This double age-biased phenomenon of land concentration and atomization is observable across the central plain. 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, and has somehow fixed the important patterns of land distribution between households.
- Land transfer in the period that followed the distribution by *Krom Samaki* was not well regulated particularly in the 1990s. Certain households were able to access land in the forest periphery of the village kept as reserved land by local authorities. Access to this peripheral land, usually in the forested or flooded commons, 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 the clearance of forestland was passed—land was negotiated financially in certain cases with local authorities (virtually a land purchase). Nowadays, the intense land speculation by companies or individuals in respect of state land has made access to additional land through clearing more difficult.
- Land purchase and sale markets are substantially wealth-biased. The ability of households to acquire land through land purchase depends on their capacity to mobilize 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. Approximately 75 percent of all land sale transactions were motivated by factors that are non-productive (health reasons, basic household expenditure and debt payment) and were propelled by household vulnerability. In a wider perspective, the uncontrolled recourse to market for land transactions has exacerbated the private enclosure of land and disembedded it from its social fabric.

### Land titling

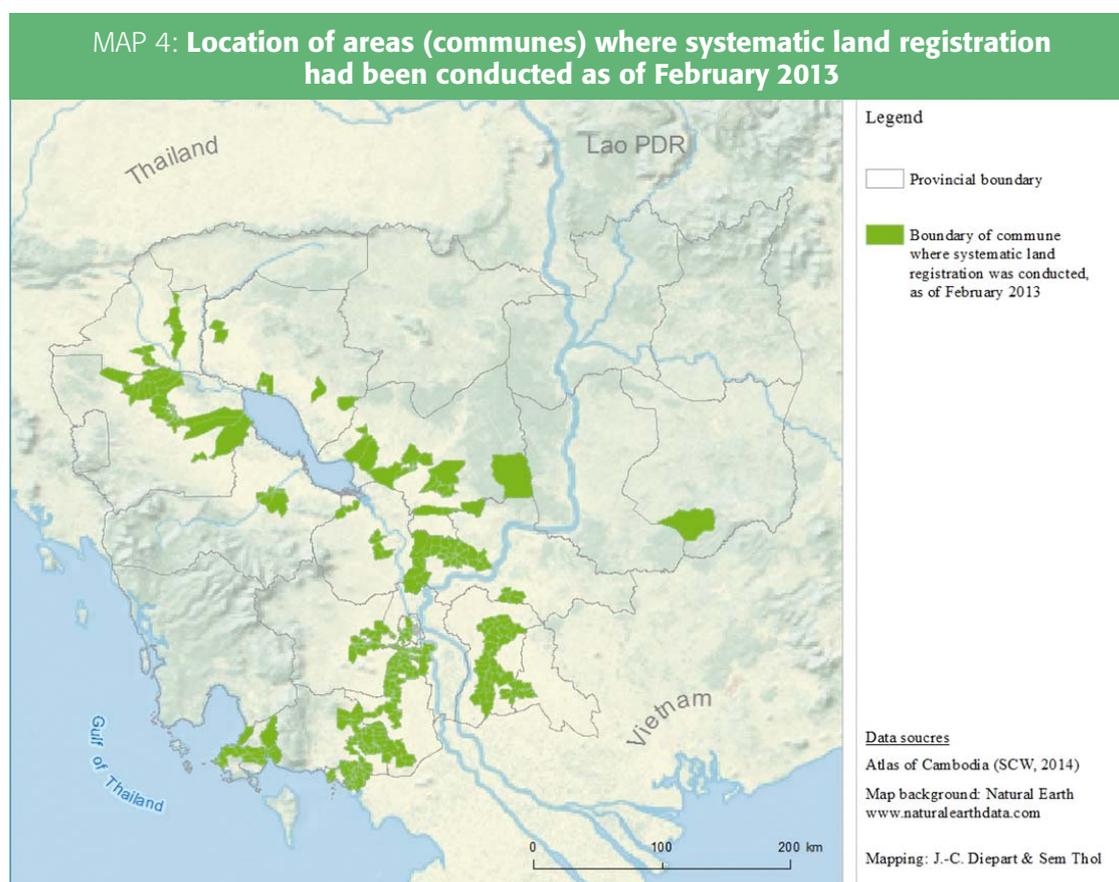
An important element of the current land reform is the implementation of land titling which rests on the assumption that inalienable private property rights should be granted to people in order to raise the security of their tenure. Another dimension of the current neo-liberal reform is the reliance on functioning markets to enable the transfers of land between users, i.e. farmers. When combined, these 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) (de Soto 2000; Deininger 2003).



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As indicated on Map 4, the areas targeted by the titling efforts are exclusively located in the central lowland plain where the decentralized and locally-driven distribution of land to the households by the *Krom Samaki* had allowed the peaceful creation of secured land tenure arrangements (So 2009).

In these central areas, titling efforts were targeted towards “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 (Ballard 2010; Biddulph 2010; Diepart 2007b). Grimsditch et al. (2009) argue that titling conducted by LMAP (Land Management and Administration Project) was an exclusionary process in that it precisely avoided directing efforts to those who were most vulnerable to eviction. So (2009) likewise suggests that much of the problem in the systematic land registration lies with the registration of subsequent land transfers which involves a multi-stage procedure within a bureaucracy with high and unpredictable costs, which the peasants are reluctant to pay.



## MIGRATION AND THE MOVE OUT OF POVERTY

The extension of landholding through the principles of appropriation “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 privatization of the commons. In a context of demographic growth and land atomization through inheritance combined with land acquisition/sale has led inevitably to land concentration. As of 2011, 47 percent of households had less than 1 ha of agricultural land while 12 percent had landholdings larger than 3 hectares (Phann *et al.* 2015). So what options do land-scarce households have in the central plains? Not many, but migrations have been of considerable importance over the past 15-20 years.





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Indeed, there is much evidence to suggest that an increase in the mobility of the population and its redistribution through migration, both within and beyond the national border, have been central in the recent development of Cambodia. According to the 2008 demographic census, 3,457,228 people were considered to be internal migrants (in that they had changed their area of residence inside Cambodia), 25.8 percent of the total population.

### 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). Other urban centres and cross-border towns (Siem Reap, Battambang, Kampong Cham, Sihanoukville and Poipet) also have a clear positive net in-migration rate (Map 5).

### The invisible flow: rural-to-rural migrations

Another migrant flow has, however, remained practically unnoticed 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 emphasize 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.

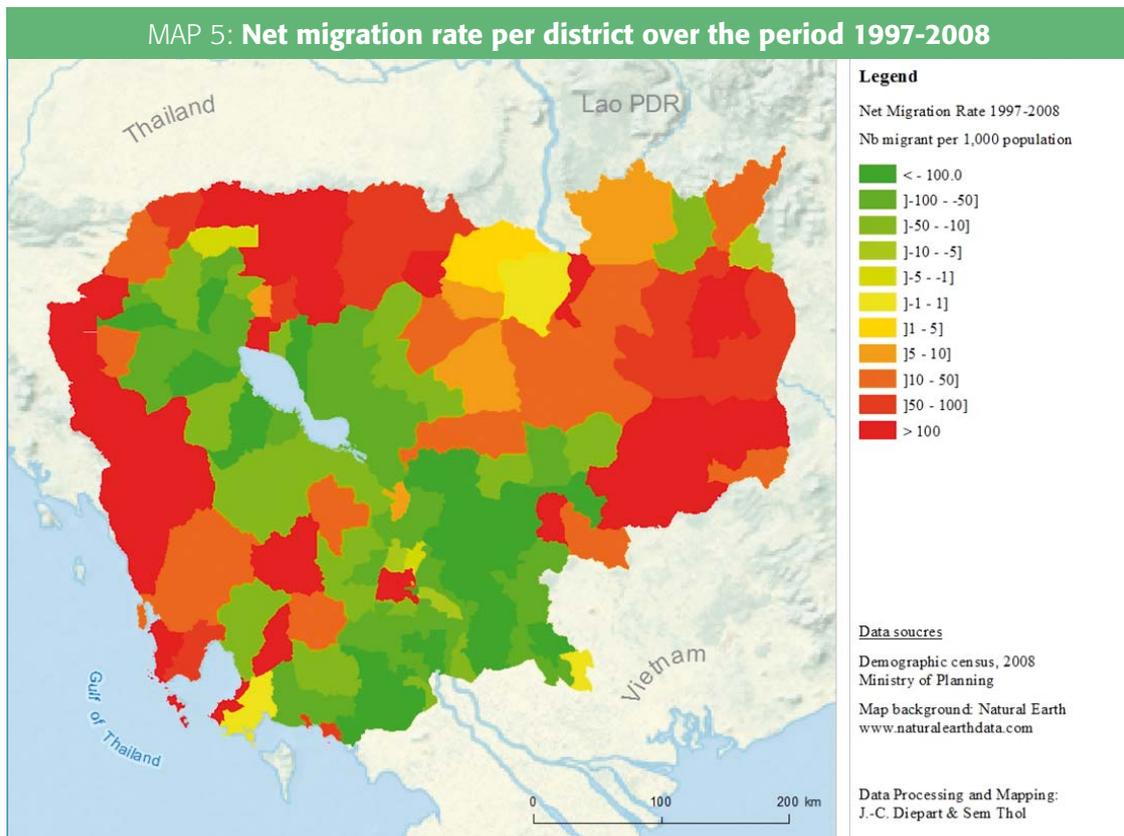
Map 5 shows quite a striking contrast. The districts with a positive migratory dynamic (shown in red on the map) are rural districts located in the upland peripheral regions, on both the east and west sides of the Tonle Sap plain and the Mekong delta. In-migration has been particularly important in the 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. These districts are characterized 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 other. A significant number of the rural-to-rural migration events that have taken place between communes within the same district are not visible here in this district-level net migration rate.

We have shown that the high population density makes access to land more competitive in the central plains and strengthens a process of land concentration. These constraints are further complicated by limited possibilities for agricultural intensification and by the restricted opportunities for acquiring non-farm jobs (Chheang and Dulioust 2012; Pilgrim *et al.* 2012). To a large extent, these migrations can be seen as an expression of the agency of peasant households in responding to rural poverty. They are also the expression of an on-going trend on the part of the Cambodian peasant to consider the principle of appropriation "by the plough" as a legitimate mode of land acquisition, which has been a consistent trend throughout Cambodian agrarian history.

As indicated earlier, the Land Law forbade 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 and is subject to a diversity of local rules. However, elites close to central power and the concessionaires have been perfectly aware of this situation.



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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 publicize 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 legitimized their authority in land control through a process of dialectical constitution of land rights and authority (Diepart and Dupuis 2014).

## LAND REFORMS IN PERIPHERAL UPLAND AREAS

### 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 maximize the benefit to the state from the granting of, sale, lease and concession or possession rights of land in the private domain”. The “benefit to the state” is a rather complex notion, subject to different and contradictory interpretations. 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 (World Bank 2009). The government did not take up these World Bank recommendations





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and decided instead to cancel the USD 24.3 million World Bank contribution (loan) to 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 by occasionally 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 that would develop, organize and protect the entire territory through integrative and strategic territorial planning mechanisms (Thiel 2010).

### Large-scale land acquisition through Economic Land Concessions

After the fiasco of concessions management in the 1990s the government, with the support of donors (World Bank and Asian Development Bank), reintroduced the idea that [agro-industrial] concessions could be (would be) central to inclusive development in Cambodia. The implementation of Economic Land Concessions was expected to result in new types of large-scale investments in rural Cambodia, to stimulate agro-industrial activities requiring a large capital investment that the state did not have, and to develop so-called “under-utilized” land. They 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. They 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.

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 have also been seen as a political tool to engage Cambodia in ASEAN integration by allowing neighbouring countries (states and companies) to invest in the Kingdom.

The granting and implementation of ELCs has not been a smooth process and we can distinguish four different phases.

- In the period prior to the promulgation of the Land Law in August 2001, 18 ELCs (still active today) were granted for mostly tree plantation activities to Cambodian investors on production/conversion forestland. These concessions cover 20 percent of the total area attributed.
- During the second phase—between the Land Law and the promulgation of the ELC sub-decree (see below)—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.
- With the release of the sub-decree in December 2005 (Royal Government of Cambodia 2005b), and the setting up of the Technical Secretariat and *ad hoc* provincial committees (Sperfeldt et al. 2012), the number of ELC contracts has increased and the nature of ELCs has changed. Starting in 2008, the increase in demand and prices for rubber fuelled a rush for rubber production in Cambodia (Global Witness 2013). 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). And the rush for land was further intensified when the World Bank put forward the idea to bring large-scale investments into the Cambodian countryside (World Bank 2007a). This move echoed the global strategy of the Bank to reintegrate agriculture as a key growth driver in the rural South (World Bank 2007b), and has been further reinforced in a subsequent World Bank strategic paper (Deininger *et al.* 2011).
- In 2012, the number of new ELCs dipped sharply as a result of the moratorium on ELCs ordered by the prime minister Hun Sen, which suggests some engagement of the government in halting the granting of new agreements. Despite the moratorium, however, a number of ELC contracts (at least 33) were signed after May 2012 on the grounds that permission for this had been given prior to the moratorium (ADHOC 2014; Zsombor and Aun 2012).

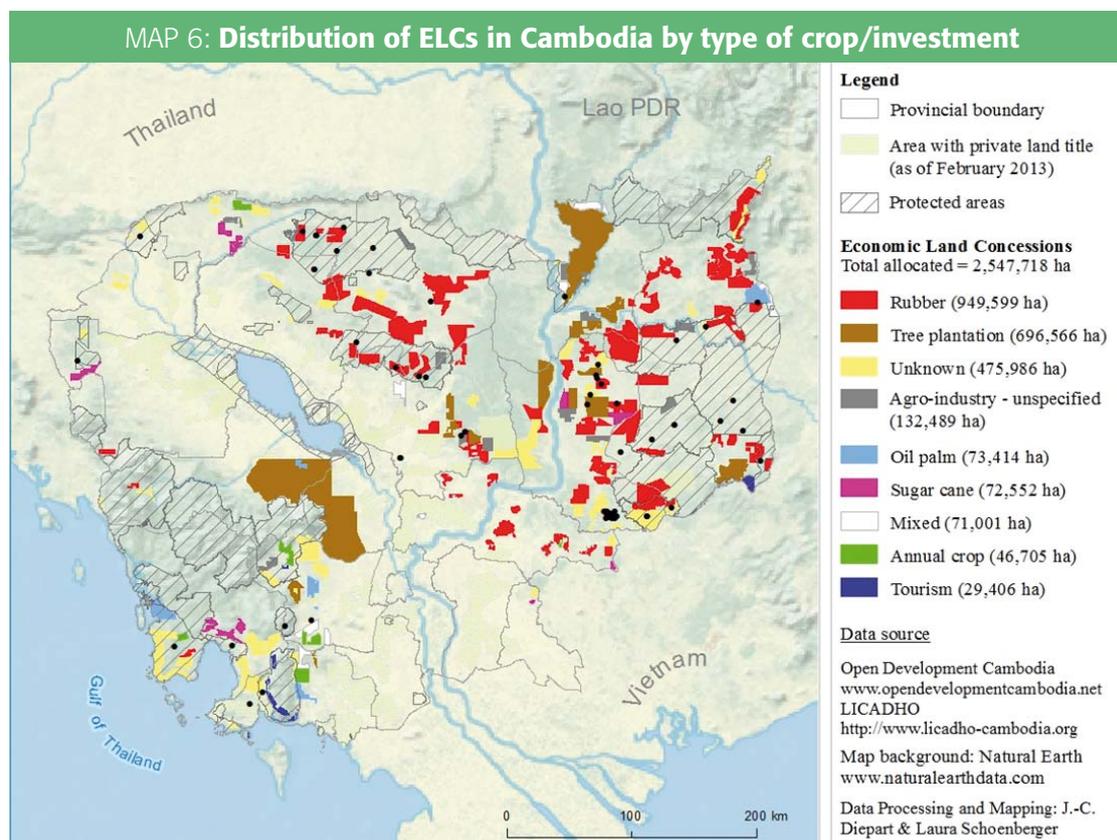


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ELCs are limited to land measuring no more than 10,000 ha and are granted for a maximum of 99 years. ELC contracts are subject to payment on the part of the concessionaires. There are no conditions with respect to who can apply for an ELC and no restriction 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 (Sperfeldt *et al.* 2012).

It is difficult to formulate an accurate picture of the location, size and status of all Economic Land Concessions. Overall, three elements explain this problem. First, there is a clear lack of transparency in the attribution of ELC contracts and it is not in the interests of the actors concerned to always provide full clarity about those deals. In inventories made public by the government, not all the concessions are listed (Boyle and May 2012). Second, some ELC contracts have also been terminated by the Ministry of Agriculture, Forestry and Fisheries (MAFF), but the procedure for these cancellations does not seem to follow a systematic path. Third, there can be a significant divergence between the area size specified in the concession contract and the actual area size of the concession on the ground (13 percent more according to our dataset).

Given all these limitations, our dataset suggests that 2,547,718 ha of land had been granted as ELCs by the end of December 2012. This encompasses 271 contracts including ELCs that were cancelled afterwards. Among these, 86 ELC contracts (32 percent of the total) have an area size exceeding the legal limit of 10,000 ha. All ELCs are located in the peripheral uplands on both sides of the Tonle Sap Great Lake, with a higher concentration in the Northeast (Map 6). According to our dataset, 37 percent of the total area consists of rubber plantations, by far the most important crop. In 2011, MAFF signed a deal with its Vietnamese counterpart granting 300,000 ha to grow rubber (Voice of Vietnam 2011). Map 6 also indicates that a significant number of ELCs for rubber plantations





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have been issued inside Protected Areas. Tree plantations (*Acacia auriculiformis*, *Eucalyptus sp.*, and *Tectona grandis*) represent 27 percent of the total area allocated. Unspecified agro-industrial crops are also important in terms of the land size they cover, as are ELCs relating to oil palm and sugar cane (Map 6).

There is a broad consensus in Cambodia among NGOs and researchers that the process of authorizing and implementing Economic Land Concessions shows clear deviations from the established legal and policy framework (Sperfeldt *et al.* 2012). 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).

Furthermore, during the implementation of these large-scale agricultural investments, a number of irregularities are also reported as routine issues. In certain instances, ELC contracts have been signed to by-pass the 2002 ban on logging, given that ELC implementation pre-supposes the clearing of the land before the establishment of agro-industrial plantations (the sub-decree on ELC is explicit about this). The case of the rubber plantation in Tumring (Kampong Thom) made jurisprudence on the matter (Global Witness 2007). In such cases, logging operations are conducted well beyond the boundaries of the concession area (Hibou 2004). More recently, fine-grained field investigations into present day forest exploitation in Cambodia have showed that ELCs continue to be signed as a way to circumvent the ban on logging operations (Global Witness 2015; Pye and May 2014).

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 agro-industrial development that was supposed to take place on ELC ground has not taken place, resulting in a failure to cultivate the land. A survey by the UNDP (cited in Sperfeldt *et al.*, 2012), revealed that, as of 2005, only 2 percent of the land under concession was being actively cultivated.

Very often the land granted to concessionaires 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, logging or land clearing operations have led to land dispossession and forced evictions that are conducted by military forces, sometimes even acting as private security services for concession companies. Human rights violations associated with these evictions have been consistent in the conclusions of reports and public declarations by successive United Nations High Commissioners for Human Rights in Cambodia (Ghai 2007; Leuprecht 2004; Subedi 2012).

An even more pernicious effect of the concession system is what some scholars have called neo-patrimonialism. In Cambodia, neo-patrimonialism has 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 (Milne 2013; Sok 2014; Un and So 2009).

### Redistributive land reform: the Social Land Concessions programme

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 North-west 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 demobilized 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.

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 through relevant ministries. Under the SLC programme, concession (*sambathian*) rights



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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 2)

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). This represents only 4 percent of the total area granted as Economic Land Concessions!

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. Volker Müller, team leader of the GIZ-supported Land Rights Programme at MLMUPC, suggests 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 (Müller 2012).

### Forest and fisheries resources co-management

At the end of the 1990s, the concession system was at an impasse. The 2002 moratorium (still in force today) declared 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. 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 2002) and a new law on fisheries (Royal Government of Cambodia 2006b) that prepare 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 resources 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 (Li 2002).

But in Cambodia, the increased attention given to local-level natural resource management should be considered as a national programme initiated by the ministries supported by donor organizations rather than a movement 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 has represented a renewed opportunity for the state to exercise control over natural resources while externalizing the costs of the operational management and monitoring.

The system of community-based natural resource management does not mean that the state has decentralized all of its rights and prerogatives. 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. 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 resource 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



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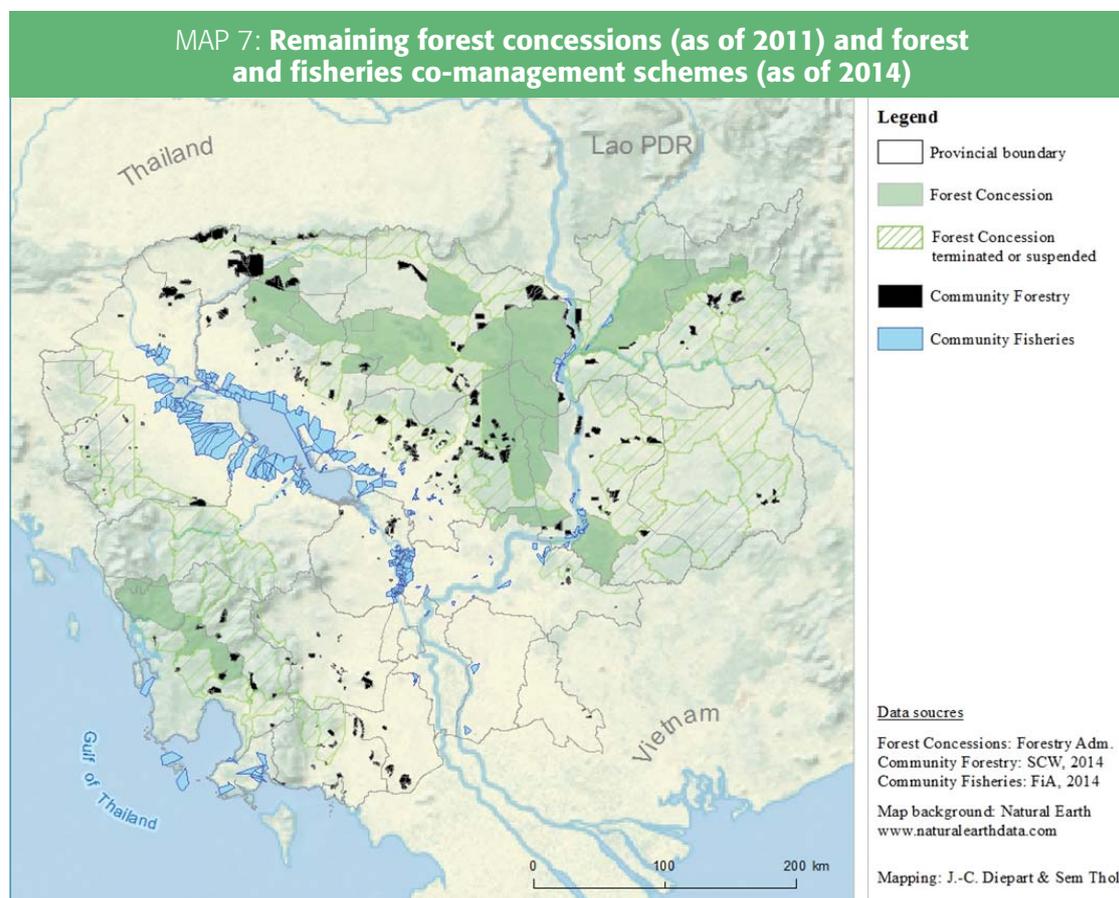
large prerogatives over the resources: these include commercial exploitation of timber or commercial fishing activities, tax collections in cases of illegal activities and even the extension of the co-management agreement.

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. Thirteen years after the release of the sub-decree on Community Forestry (Royal Government of Cambodia 2003), the contribution of community forests remains modest. The most recent data indicates that there are 235 Community Forestry schemes in the country covering a total surface area of 537,828 ha (Save Cambodia's Wildlife 2014), 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, the fact that most Community Forestry areas are those of degraded forest should be added (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 areas released from fishing lots, the Fisheries Administration and donors have encouraged the establishment of Community Fisheries. In 2012, the remaining fishing lot system was totally abolished. According to most recent statistics there are 447 Community Fisheries throughout the country 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 reasons detailed next.



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Primarily supported by international organizations, co-management was envisaged by a large number of NGOs as a stepping-stone for fundraising. Co-management programmes have mushroomed across the country and have also served to support an emerging urban middle-class of new professionals.

In order to provide an interface between the community and the state, management committees were quickly legitimized 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.

Guided usually by good intentions, 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 commons.

In addition, implementation of co-management on the ground has tried to conform to the different interests and rationality of actors in the community. But communities are not socially homogenous. Instead they are highly hierarchical along the lines of 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 degree 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. So what have been the results? 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, which is quite at odds with the endogenous logic of land and resource management of the commons. This principle—applied to





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new community territories—has actually reinforced and stimulated the over-exploitation of resources in places where this exclusivity principle is not applied and where unregulated privatization of the resources has resulted in a tragedy of the commons *sensu* Hardin (1968).

But the development of co-management was a very important response to the general outcry against the fragmentation of territories 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 commons against those external interests than with a genuine need for, and interest in, improving natural resource management practices.

### 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). Communal land titling has been integrally linked and restricted to the idea of indigenous people. It thus relates to 1 to 1.7 percent of the population.

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 (non-Khmer), social, cultural and economic unity, who practise 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, with the land then cleared by means of fire (Mertz *et al.* 2009).

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. 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 to private ownership is a possibility available to any member of the community *only* if he/she decides to leave the group (East-West Management Institute 2003).

In 2009, a sub-decree was brought into effect to establish the legal foundation for the granting of collective titles to indigenous communities. The procedures foreseen 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 title 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: i) agricultural production and ii) residential land are transferred from state private land and iii) lands reserved (fallow) for swidden agriculture, iv) burial and v) spirit forests areas and are transferred from state public land (Royal Government of Cambodia 2009).

A total of 114 communities have engaged in the process of applying for a collective title. Of these, 95 indigenous communities have been recognised as such by the Ministry of Rural Development. Among them, only eight have completed the process and received the land titles (six in Monduliri and two in Ratanakiri) (Narim and Crothers 2014).

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, illegal logging and the demand for new land emerging from peasants who have migrated from the lowlands, 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.



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Recently, a convergence of interests between agencies of the United Nations, academics and a group of NGOs resulted in the formation of a movement 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 secure tenure. In order for indigenous people to achieve secure access 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.

### 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 Zülsdorf (2013) note that neither of these decisions has yet been implemented.

Circular 02 on the "regularization of illegal occupants on state land" was released in 2007 and is a more elaborate document to address the issue. This is important because it shows government recognition for the fact that illegal state land acquisition is not only driven by speculators but also by "real poor families who are truly exploiting 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 that considerably limits the operational capacity of the mechanism. Müller and Zülsdorf (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.

## ORDER 01 AND NEW LAND RIGHT FORMALIZATION

On 7 May 2012, the 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 ELCs, Order 01 initiated an unprecedented land titling campaign in those areas where the land rights of people and companies overlap onto state land.

Order 01 specifically tries to address land security inside the ELCs through private land titling, a process Dwyer (2015) calls the "formalization fix". However, the implementation has been quite different as the adjudication areas for the Order 01 titling scheme were largely expanded to include other land categories such as forest concessions, Protected Areas, and forest rehabilitation warrants from provincial authorities.

Müller and Zülsdorf (2013) provide a detailed description of how the human resources were mobilized and organized to implement titling schemes. The government registration staff totaled 2,000 people (1,000 people from the Systematic Land Registration process complemented by around 750 members of staff from MLMUPC and also from other ministries). To support the government staff, up to 2015 young volunteers from 30 universities, institutes, public and private training centres and three NGOs were recruited and sent to the field in 168 teams (so-called *Krom Niset*). Each team comprised up to

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12 government staff members including representatives from the Ministry of Interior, Ministry of Agriculture, Forestry and Fisheries, the Ministry of Environment and other ministries and up to 12 young volunteers. The presence of young people in supporting the titling process drew substantial media attention, and the whole initiative became known as "Prime Minister Youths land titling campaign".

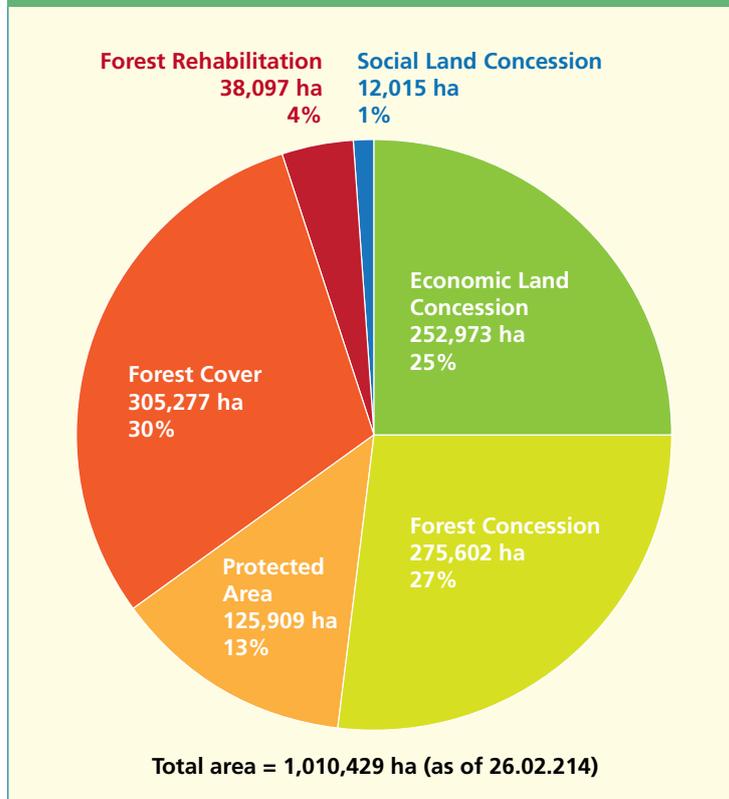
According to our dataset, an area covering a total of 1,010,429 ha was measured under the Order 01 land titling initiative of which 92 percent (927,848 ha) was formally distributed to 317,444 families. The remaining 8 percent has been kept as reserved land for future use. Within only a year, the outreach of the land titling under Order 01 was dramatic when compared with the much lower figure of 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-categorized forest cover, while only 25 percent came from ELCs (Figure 3). Interestingly, the dataset specifies a few other land categories where titles were issued which were not initially foreseen (Social Land Concessions). It seems clear from these results that the Order 01 titling scheme has been a comprehensive attempt to address the problem of insecurity associated with irregular occupation of state land in the Cambodian uplands.

Comprehensive land titling efforts can also be seen as a further step towards the commodification of land in the uplands and the privatization of the commons. These efforts promote private property rights as a legitimate alternative property right in areas where collective arrangements of the commons have prevailed throughout history. The titling process has resulted in different 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 communal ownership and those opting for private land titles (Milne 2013).

A fundamental question underlying the land titling process surrounds its implication for land security; that 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 necessitates an examination of the tenure security of land located inside and outside the adjudication area. In fact, titling of private land is instrumental in the delineation of the land that is not privatized and which then becomes a *de facto* fixed state asset. By extension, land security provided on land within the adjudication area might consequently reduce land tenure security in areas outside the adjudication area which were subjected to local recognition (as belonging to someone) (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.

FIGURE 3: Distribution of land excised from state land under the Order 01 land titling scheme, by size



Source : MLMUPC 2014

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The process has proved to be largely incomplete and large areas appropriated by people have been left untitled. This incompleteness of land titling in areas where people live and/or cultivate might give legitimacy to the concessionaires or Protected Area authorities in forcing/evicting those people from the delineated land. There are also cases of illicit land acquisition, usually involving outsiders who had managed (with the help of locals) to clear a piece of land and build a house—literally overnight—in order to take advantage of the cheap titling services on offer.

The actual implementation of titling and the formalization of land property rights might further reshape labour relationships between companies and local people, for instance by providing new wage labour opportunities. These opportunities, if they actually materialize, might further modify land-labour relations between households in the neighbouring community. New develop-



ment 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.

The spatial dimension of these recent territorial developments is also important. The formalization 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 (for example, transport, energy and irrigation) and social services (including education and health) that will need to be articulated through spatially-explicit development strategies.

## CONCLUSIONS

Current land tenure regimes in Cambodia are highly fragmented between lowland central plains and peripheral uplands. This fragmentation has yielded contradictory and problematic results.

In the lowland areas, the current trends to modernize land property rights through land titling and the promotion of land markets is quite at odds with the historically rooted institutions of peasants to appropriate land “by the plough” and to seek land security of tenure predominantly through recognition of possession rights legitimized 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





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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 fragmentation 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 marginalized the peasant population who are expanding their land-holdings.

A central shortcoming of the current land reform is its failure to articulate the processes of land rights formalization 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. In a parallel process, and driven by strong state-based political economy, large land deals have been concentrated in the uplands of the entire country along processes that are exclusionary in nature. It is against the rapid changes unleashed by these ELCs that we present the ineffectiveness of other land tenure regimes that are part of state land management in the uplands. Indeed, the incompleteness of the land titling process has left large areas untitled and has created new forms of land tenure fragmentation in the uplands that 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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