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The Cambodian peasantry and the formalisation of land rights: historical overview and current issues

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N°11/2015

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ACKNOWLEDGMENTS

This working paper is the product of a partnership between AgroParisTech (UFR Agriculture comparée et développement agricole/UMR Prodig), the association 'Améliorer la Gouvernance de la Terre, de l'Eau et des Ressources naturelles' (AGTER) and the authors. It is part of a research project supported by the Agence Française de Développement (AFD) through Comité Technique Foncier et Développement (CTF). We are grateful to AFD for financial support and to the scientific support provided by AgroParisTech (Olivier Ducourtieux and Hubert Cochet) and AGTER (Mathieu Perdriault and Michel Merlet).

In a wider perspective, this working paper echoes a research agenda initiated back in 2007 in Battambang that developed in a rather organic manner with contributions from many people and institutions. Between 2007 and 2011, we were fortunate enough to advise the Battambang provincial spatial planning process at the Provincial Department of Land Management, Urban Planning, Construction and Cadastre (supported by GIZ - Deutsche Gesellschaft für Internationale Zusammenarbeit). This involvement has stimulated and enriched the research activities we have conducted in this parallel process. A number of Cambodian and Belgian undergraduate and graduate students have contributed to this initiative; Gembloux Agro-Bio Tech (Université de Liège, Belgium) has been a particularly key academic partner. We have also benefitted from intellectual exchanges with researchers from the Faculty of Development Studies (Royal University of Phnom Penh) in the context of a research project supported by the International Development Research Centre (IDRC) of Canada, with researchers from AFD (Cambodia country office) and from the Learning Institute (Phnom Penh). All of these exchanges have had a considerable influence on our reflections and questions well ahead of the writing of this working paper.

We are very grateful to David Dupuis (Université Libre de Bruxelles) and to Franz-Volker Müller and Sophorn Poch (GIZ Land Rights Programme) for their insightful comments on an earlier draft. Thanks to Ron Jones in the early editing stage and to Laura Schoenberger for her encouragements along the way. The support of Jan Taylor in the final editing stage was precious.

INTRODUCTION

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

In Cambodian history, land reforms have been at the centre of successive modernisation projects that have tried to subordinate the peasantry to the state and/or to markets. So in order to understand the role and the place of peasants in contemporary land reform, it is important to examine the past and to understand how peasants have gone through previous reforms. This working paper is an examination of the current formalisation process relating to land property rights against the backdrop of Cambodian history and the political economy of land and agrarian change. Our working definition of property includes the entire bundle of rights to access, use, transfer and control of land. In a wider perspective, our understanding of rights translates what Ribot and Peluso (2005) call 'the ability to benefit from land'. Our choice of the expression 'land rights' reflects the intention to embrace this wider notion of land access.

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

although rice is also cultivated in land that is relatively lower (in depressions, along river banks, etc.).

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

Our lines of argumentation are essentially geographical. We first suggest that legal rules and operational tools of land reform have been spatially fragmented between the lowland central plain and the peripheral uplands and have yielded contradictory and problematic results. In the lowland areas, we show the historical continuity for peasants to acquire land 'by the plough' and to seek land security of tenure predominantly through recognition of possession rights legitimised by local authorities through local institutions. We contrast these consistent trends with past and current attempts to modernise land property rights through land titling and the promotion of land markets. We argue that land titling has not radically change the security of tenure in the central plains but rather that the uncontrolled recourse to the market for land transactions has exacerbated the private enclosure of land and disembedded land from its social fabric. In the upland areas, land reforms have been implemented mostly in a context of post-war political economy fuelled by the extraction of natural resources. The allocation of forest concessions and later of agro-industrial concessions by the state has overwritten local land management rules and institutions and has considerably undermined the security of peasants in respect of their land tenure. A central shortcoming of the current land reforms lies in their failure to articulate the processes of land rights formalisation in lowland and upland areas, although both regions are closely linked through land-driven migration movements that have contributed to a massive redistribution of the Cambodian population.

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

1. THE ENDOGENOUS LOGIC OF TERRITORIAL MANAGEMENT

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

Land acquisition ‘by the plough’

According to traditional Khmer rural codes, the king is the owner of land and water (*Macha Teuk Dey*) in the country and its farmers are users. The right to land access and use could be claimed by clearing, settling on the land and actually cultivating it. This practice is commonly known as acquisition ‘by the plough’. As long as it does not infringe on the rights of others in the community, the cultivation of a piece of land, for subsistence farming, provides farmers with individual possession rights (Olivier 1954; Thion 1993; Guillou 2006). In Cambodia, possession (*paukeas*) is indicated by a bundle of rights that include access, use, claim, transmission and exclusion. 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 (Aymonier 1904; Greve 1993). It also allowed them to prefer agrarian expansion (as opposed to intensification) to ensure the increase of agricultural production. Today, even if the land and people are quite different, the principle that the possession of land depends on its uncontested use is still clearly perceptible in most peasant communities.

Across the country, territories have been organised into three zones: the centre (kampong), the rice hinterlands (srae) and the forest (prey) (Chandler 1998). Placed under the control of the district authority

(*chovay srok*¹), the *kampong* was where administrative, political and economic powers merged within the patronal elite. The rice hinterlands (*srae*) comprised villages linked to the *kampong* for commercial exchanges, the collection of rice taxes, religious festivals and use by officials looking for military recruits. Rice growing villages were arranged irregularly with houses scattered randomly, reflecting the loose social structure of Khmer villages at that time. Ebihara (1984) has indeed argued that there were very few collective or communitarian entities organising rural communities in sixteenth- and seventeenth-century Cambodia. In pre-colonial times, it was not actually possible for a strong local power to develop in the rice-growing villages (Thion 1993). Hidden in the prey (forest) these villages had little contact with the *kampong*, but were very important in the exploitation of forest resources, in grazing and as reserves of agricultural land. They were frequently raided for slaves (Chandler 1998).

Multi-functionality of the commons

Rice production is the core activity in Cambodian peasant production systems but it is integrated into a larger portfolio of activities, most notably the collection and management of natural resources on 'commons', which individual farmers co-manage with others. These multifunctional areas are present in most rural communities but can be best observed in the huge Tonle Sap floodplain, a rich aquatic ecological system, and in upland riparian forests rich in timber and non-timber resources.

The Tonle Sap floodplain is characterised by a mosaic in which both increased density and degradation of shrub and grasslands can be observed. The plain is characterised by continually changing land use patterns ranging from rice cultivation (at the edge of the plain), grasslands used for grazing cattle, and shrub land where a variety of non-timber forest products are harvested (Evans et al. 2005; Diepart 2007c; Roberts 2011). This diversity of land use is maintained through a variety of practices such as burning, ploughing, fallowing, or grazing with the

¹ The term *srok* refers literally to district but the expression *chovay srok* is used in an even wider context to refer to district, province or even commune authorities.

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 2007b, 2007c). The system is rational. The different rice cropping systems are adapted for different water depths and encompass important aquatic biodiversity (Balzer and Balzer 2002). The grass is crucial as fodder for the cattle that generate a significant part of the farming income portfolio, and the shrubs are also important for the energy supply of households (i.e. as firewood). Fishing in the ponds of the receding floodplain is part and parcel of this management, which aims to maintain multi-functional agro-ecosystems. The Tragedy of the Commons, *sensu* Garrett Hardin (1968) has been avoided due to a low population pressure on land which has facilitated the reproduction of land fertility and has reduced the risk of conflicts between resource users.

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

The management of common-pool resources by the peasantry is exemplified in diversification patterns and risk coping mechanisms that enable them to make sustainable use of limited resources and to reduce the risk to their livelihoods that is associated with their reliance on a limited number of products. The management of these common-pool resources by peasant communities contributes to the maintenance of biodiversity. In this sense, peasant communities perform an environmental function in their landscape (Diepart 2007b). Additionally, the combination of activities associated with commons management creates an important territorial value-added service for household incomes (Hansen and Neth 2006; Van Acker 2010; Diepart 2010). In certain cases, this income is indispensable for the survival of households. The use of commons can balance agricultural income disparities associated with land concentration in the rice landholdings. Because

these activities mobilise an important section of the labour force (usually underemployed during the dry season), the multifunctional management of commons serves as a central element of household labour management.

Decision-making and conflict resolution in peasant communities

In Khmer rural communities the central decision-making institution in land and natural resources is the household and 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 maximise their interests. To be more precise, 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 of land and resources 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 characterised by a flexible set of dyadic relationships extending down from the king and his administration to the village. Such arrangements that form patron-client relationships have been a continuous and central element of the Khmer social fabric throughout history and remain a key social organising factor in

contemporary Cambodia. Patronage is exercised and produced in specific spheres of power including political-administrative (dominated by local authorities), and economic networks structured around those who control the provision of agricultural inputs, the commercialisation of output and the access to credit. The intervention of development agencies should also be considered as a new sphere of patronage in Cambodian villages (Ledgerwood and Vijghen 2002). In reality, these patronage networks are all entangled, and the inter-dependence of households within these multi-faceted patronage networks is the norm across the Cambodian countryside. 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 liberalisation of the economy. This is resulting in very weak links and trust between the communities and the public institutions which collude with private investors.

Another important feature of collective action (and conflict resolution) is the associations created and structured around the pagoda. These associations are usually transitory and are meant only to address a specific need or problem in the community across a wide range of social endeavours (education, ceremonies, public work, credit, etc.). Even if these associations are not directly involved in land and natural resource management, they constitute social arenas or platforms where community dialogue is instituted. These social networks develop slowly and decisions are taken by consensus. Nevertheless, they have the ability, resources and competence to gather the stakeholders and entrust dialogue for collective action (Pellini 2007; Diepart 2007b; Aschmoneit 1998, 1995). 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.

2. A GENEALOGY OF LAND TENURE REGIMES

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

Precolonial era: acquisition ‘by the plough’

In pre-colonial times, very low population pressure did not generate any need to regulate the use of land. There were no cadastral records that maintained information about land holders, land use and land values (Thion 1993).

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

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. The *chovay srok* were authorised to collect taxes from their *srok*, from which they could also mobilise labour for warfare or public works. Access to manpower and rice meant that in practice the *chovay srok* controlled the balance of power in the kingdom (Rungswasdisab 1995; Chandler 1998).

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

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

The modernisation of land property rights 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 utilisation of the land. In contrast, ownership rights are definitive and inalienable. They do not force the owner of the land to cultivate in order to claim full property rights on it. The transformation of possession to ownership rights rests on the premise that ownership rights give more security and incentives to farmers and investors to use the land more efficiently. The transformation of possession to ownership rights marks the complete commodification of land: that is, its alienation from the social fabric in which it is embedded (Polanyi 1957).

Land registration and titling implemented by the French administration consisted of two consecutive steps which followed 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 five-year occupation of a plot of land. The fixed asset registration required technical measures and registration in a land book and the procedure was overseen by the commune chief (*me khum*) who acted as the certifying officer.
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 (by other peasants and *me khum*). We see that that the opaque distinction between possession and private ownership, which is responsible for so many contemporary land difficulties, is not new.

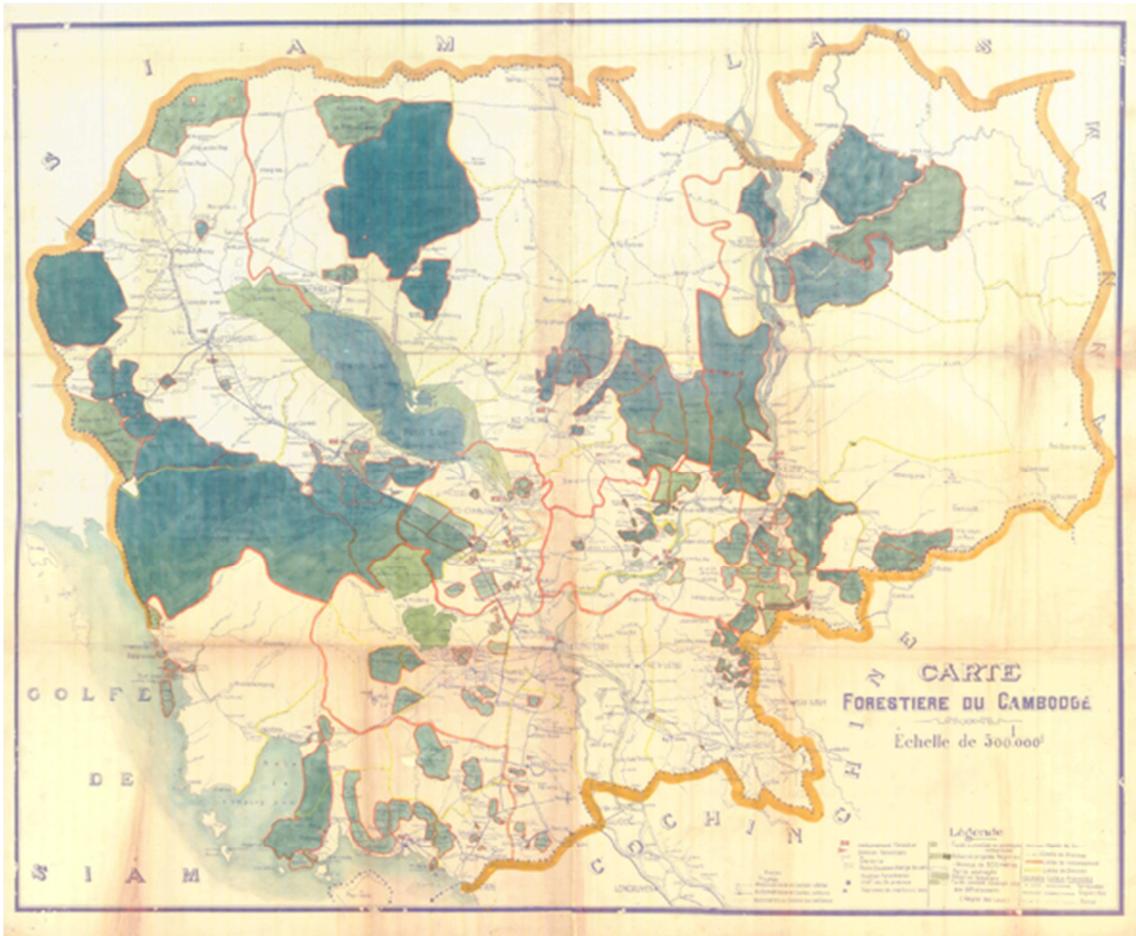
Thion (1993) explains that the establishment of the new land rights institutions in Cambodia did not proceed smoothly but was accompanied by resistance on the part of the local elite (controlled and supervised by the French administration) and on the part of the Cambodian peasant because land titles 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. Everywhere, though, the acquisition 'by the plough' continued as the norm. Ultimately, the introduction of land titling by the French reinforced the role of the commune chief (*me khum*) in certifying land occupancy and in providing land security to the people.

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

French intervention in Cambodia also resulted in a gradual modernisation of administrative mechanisms in the forestry sector. In 1899, the French army provided Cambodia with a rudimentary forest administration, placed under the forest service of Cochinchina (Kampuchea Krom, currently Southern Vietnam including the Mekong delta). The French army corps, a large consumer of timber at that time, organised the first exploitation of teak (*tectona grandis*). The colony wanted to enrich its treasury by granting logging licences and levying sales taxes (Thomas 1999). This very liberal model of forest management was not well

controlled and quickly resulted in massive forest degradation (Gouvernement Général d'Indochine 1905). To sustain colonial forest rents, the French administration initiated a system of forest reserves to allow for forest regeneration. Starting in 1902, logging activities were regulated within these state enclosures according to licenses signed between French companies and the forest administration, the so-called 'exclusive logging privilege – privilèges exclusifs de coupe'. This was a clear attempt to substitute small-scale indigenous forest use with large scale entrepreneurial exploitation (Thomas 1999) and 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 drastic reduction of grazing herds. The rules and coercive measures that accompanied colonial forestry tended to spare the French entrepreneurs and hang the repression over peasants and local authorities (Thomas 1999). Peasants chose passive resistance to these rules and tried to evade them by turning to smuggling routes controlled by village authorities and Thai or Vietnamese traders (Thomas 1999).

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



Map 1 - Forest reserves (dark areas) in Cambodia as of 1930 (Gouvernement Général d'Indochine 1930)

Post-independence and the persistence of French rules (1953-1970)

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

But 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). Thion (1993) showed that according to the 1962 census, 84 percent of farmers were cultivating on their own land while Kiernan and Boua (1982) showed that by 1970 the number of land-owning farmers had been reduced as the number of landless rose to 20 percent. The gift of land that nature had offered Cambodia did not protect peasants from indebtedness. This period was also characterised by the beginning of land inequality in Cambodia that was set to rise. 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, as in the previous period, land continued to be claimed in three ways: ownership title, fixed asset registration, and simply by occupation. As the property system continued to be implemented, the traditional system of ownership claims through occupation had yet to be abandoned. While the main growing areas were either registered under ownership or through fixed asset registration, land continued to be cleared, utilised, and claimed through the customary arrangements that existed prior to the introduction of the private property system. The continuation of customary land clearing and ownership through occupation, coupled with a modern system of property rights, caused conflicts when the government failed to protect those vulnerable groups who did not integrate into the modern property system.

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 (Thion 1993; Kiernan 1982).

The failure of rural credit schemes, along with the poorly run and unprofitable state-owned enterprises, put the Cambodian economy in a bad shape. Immediate liberalisation was necessary in order to revitalise the economy with foreign investments, which, at the same time, could provide a source of income for the government's coffers. Unfortunately, mounting economic grievances and injustice that were the result of administrative corruption, and the failure of the state to protect

individual citizens from abuses by powerful people, did not allow the reform to take effect, and this created an unfavourable situation for the monarchy government. In 1970, this situation, together with nationalistic sentiment, was seized upon by General Lon Nol to overthrow the monarchy and install a republican government. Lon Nol was backed by the US government in the context of the American intervention in Vietnam. Cambodia was thrown into the Indochina war, which completely destabilised the country and destroyed the livestock and main agricultural infrastructures. In exile, the king supported the Cambodian factions that resisted the republican government, among them the Khmer Rouge (KR), a group of communist revolutionaries who were piloting collectivised farming in the areas under their control.

The DK experience and the imposition of collectivisation (1970-1975)

The modernisation project of Democratic Kampuchea (DK) was based on the construction of a nation-state, and its implementation between 1975 and 1979 was radical. The national priority was the development of the rice sector. The *Angkar* – the ruling body of the Khmer Rouge - abolished the right of individuals to possess land, nationalised the entire agricultural domain and collectivised all means of production. Labour was organised within collective production groups to which individuals were recruited. The urban population living in the *kampong* 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 (Tyner 2008).

Krom Samaki and the collectivisation of the peasants (1979-1989)²

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

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

The first months of 1979 witnessed chaos across the country. People who were displaced during the 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 1975-1979. In the absence of any legal framework, *de facto* re-appropriation of animals and agricultural equipment that people owned in the 1960s took place (Frings 1997).

When the socio-political situation stabilised a new unit of agricultural production, the *Krom Samaki* (namely Solidarity Group), was declared and recognised by the party as the main unit of rural development. The *Krom Samaki* engaged the country in a second wave of agricultural collectivisation, aligned with the Vietnamese register. 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

² This section was mostly researched and written as part of an MSc thesis conducted back in 2002 in Cambodia. In the thesis, I examined the context and modalities of re-collectivisation and de-collectivisation of agriculture after the KR. In addition to an extensive literature review, it is based on a case study in Kampong Speu province (Diepart, 2002).

property of the State but it 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, and this gave rise to a number of divergences that contributed to initiating land differentiation beginning as early as the 1980s.

In principle, collectivisation applied to all means of production (draught animals and agricultural equipment), but due to the *de facto* (re)appropriation of these in early 1979, the PRK could not envisage the confiscation of what was already in the hands of the people; such a measure would have been too unpopular (Frings 1997). So the families who could re-appropriate cattle received more land than others (one buffalo was equivalent to one full active labourer). As possession of a draught animal was already an important factor of differentiation in Cambodia during the 1960s, it is probable that the land distribution that took place through the *Krom Samaki* re-initiated some pre-war differentiation patterns.

The area of land distributed to families depended on both the total land available in the village and on the total number of families. Migration movements played an important role here. Certain home-migration was more important in some villages than in others and this resulted in the ratio of land to people being sometimes very different from one village to another (even at times within the same commune). As there were no mechanisms of compensation between villages, landholding allocated to families could be very different. In some villages, the group chief anticipated this problem by keeping some land but these reserves were small in size and a class of landlessness quickly emerged.

In principle, the commune and group chiefs in charge of the land distribution were elected by the population. They were residents of the area, basically peasants like everyone else who were also known to people through kinship, and as neighbours or acquaintances and were hence easy to approach (Ebihara 1968). In this context, favouritism in land distribution was frequent (Frings 1997). Field observations from Kampong Speu (Diepart 2002) and from Kampong Thom (Diepart 2007a) suggest that favouritism has resulted in the land rent capture (land of

better fertility) by families who were well-connected with the group or village chief.

Land distributed to people did not correspond to the total land in the commune. During the war, some land was abandoned and colonised by a secondary shrub vegetation regrowth. There were no specific rules to govern the distribution of this land (Frings 1993), so access to it was dependent on either the labour capacity and willingness of certain families to expand their agricultural landholdings, or on the privileged relationships certain families had with the group or village chief (Diepart 2002).

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

In a move to address these problems and to motivate the peasants, the theoretical model of *Krom Sakai* was reformed. Some land was given as usufruct (the right to enjoy the land without changing it) to families and, from 1982, authorities recognised the differentiation of the *Krom Samaki* model and the existence within it of three levels:

- Level 1 was the collective organisation of the labour force by groups or teams (Frings 1993) in which farmland was collectively held and worked by a small group of families and the produce divided among the group or team members according to the labour each had provided.
- In level 2, labour was still organised collectively but the agricultural land was divided up into individually-held plots and privately farmed. A system of mutual aid allowed families to manage peak labour without

constraints. The mutual aid group was actually the re-emergence of a 'provas day' group which was a traditional form of mutual labour exchange in peasant communities. The group chief was responsible for organising the labour exchange between families.

- Level 3 was the least collectivised form of *Krom Samaki*. Draught animals and land were allocated to families as private possessions and each family was allowed to manage its production individually. Solidarity was not absent but it was not organised by the group.

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

Under these differentiation forces and the absence of a strong state to counter-balance them, *Krom Samaki* was dismantled *de facto* in the countryside. The rule was that land previously allocated to each family within each *Krom Samaki* was redistributed to them. But sometimes, the land was redistributed according to numbers of people, and not according to their active roles. 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 among scholars in portraying the *Krom Samaki* as a complete failure (Frings 1993; So 2009). Their explanation for this is three-fold:

- Hard-working people lacked the incentive to continue, as the products of their labour were seized by lazier people;

- The PRK lacked human resources to oversee and encourage collectivisation. It lacked skilful cadres convinced of the benefit of collective farming;
- PRK leaders were afraid of the political backlash from imposing strong penalties for non-compliance with collectivisation directives.

After the trauma of DK, there is little doubt that, at the time, people were not willing to embark in a new collectivisation of agriculture. The actual 'contract', as described by Sikor and Lund (2009), 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, fertilisers, tractor fuel and other necessities for agricultural development). And the forces of differentiation in the Cambodian countryside were so strong that a communist government, who had to face external and internal contestations, and who lacked competent cadres, could not actually address them.

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

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

Liberalisation and unequal access to land (1989-2001)

At the end of the 1980s collectivisation was officially abandoned. But on the ground, the land of *Krom Samaki* had already been distributed to peasants. Under the surveillance of the Bretton Woods organisations Cambodia then again engaged in an unprecedented set of reforms which radically changes the country's land tenure institutions. Whereas the World Bank recommended starting with economic reforms including macro-economic stabilisation through monetary and fiscal policies, price liberalisation and the privatisation of small and medium enterprises, Ljunggren (1993) shows that in fact Cambodia started with land reforms.

In 1989, a number of new legal provisions relevant to land included amendments to the constitution (Jennar 1995). Land remained the property of the state and no-one could claim rights to land acquired before 1979. All Cambodians now had the right to occupy, use and sell the land allocated to them by the state. Three types of land were defined: settlements (*loumneuvthan*), agricultural (*kasekam*) and concession (*sampathian*, 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 synthesise all these new legal provisions, a Land Law was passed in 1992. This law confirmed that all land belonged to the state and that all Cambodians 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 synthesise the three main land tenure regimes inherited from history: the acquisition 'by the plough', state, and private ownership promoted by the French and the socialist ideology which prevailed in the 1970s to 1980s (Van Acker 1999).

In 1989, a procedure for so-called 'sporadic land registration' was put in place to register the agricultural land. This sporadic process involved a number of steps before land titles could be issued, a procedure that So (2009) summarises into two main stages. First, farming families who had received land plots for cultivation were required to submit applications for land possession rights to the cadastral office. Importantly, the

application required verification by both the village and commune authority 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 responsible 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 be actually issued (Van Acker 1999). The complexity of the procedure and the clear lack of resources allocated by the state to endorse the implementation partially explains this backlog. But corruption associated with the procedure also excluded people from successfully completing the process. For example, if, officially, the registration of one plot cost USD 5, the real cost incurred by the applicant could reach as much as USD 300 to 400. At each and every step in the procedure an extra payment was required by the underpaid staff in charge of the registration. This real cost was obviously prohibitive for an ordinary peasant, who usually decided to abandon the procedure when asked to pay the extra. Those who could afford registration were the well-connected people and the urban investors who became important actors in the land markets of the 1990s. The consequence of this procedure was, again, the dualisation of the land tenure regime between possession and property right, socially recognised and approved locally by *Me Khum*, and inalienable private ownership acquired through cadastral procedure. The distinction is very important 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 characterised by a rising inequality in terms of agricultural landholding size, taking place through the related processes of landlessness and land concentration.

Detailed and comprehensive data on the extent of landlessness and land concentration is not available, but estimates can be found from several surveys conducted in the 1990s: see Chan et al. (2001) for a synthesis. Each survey has its own sampling framework, so it is difficult to compare

them and to gather sense of the evolution of landlessness or land concentration. However, all surveys suggest that landlessness and land concentration increased in the 1990s (Sik 2000; Chan, Tep, and Acharya 2001).

The Landlessness and Development Investigation Tool survey (LADIT), conducted by the Oxfam Cambodian Land Study Project from 1999-2000, presents the most convincing approach to examine and understand landlessness and land concentration. Based on recall survey methods, LADIT suggests that the proportion of people who were landless in 1960 was 4.01 percent, dropping to 2.48 percent in 1984 before rising sharply to 12 percent in 1999 and further to a predicted 15 percent in 2001 (Biddulph 2000). The survey states that landlessness was highest among families headed by single women—21.2 percent on aggregate. Among the landless, 54.8 percent had never owned land, while the rest had lost it for one reason or another. For those who never owned land the main reasons were reported as new marriage (42.3 percent), returnees (27.3 percent) and change of village (26.8 percent). Of those who had lost land, the main reasons for this were expenses due to illness (43.7 percent), lack of food (20.1 percent), expropriation (13 percent), indebtedness (4.6 percent), and natural disaster (3.4 percent). Other research on landlessness suggests similar results (Sik 2000; So et al. 2001; Diepart et al. 2006; Van Acker 1999).

Landlessness and land concentration are closely related to the emergence and rapid development of an active land market legitimised by the new economic reform agenda, namely economic liberalisation and privatisation. Land sales are usually driven by the socio-economic vulnerability of the household (distress sales). On the demand side, land purchases are triggered by 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 2011). In the absence of protective mechanisms that would prevent peasants from falling into over-indebtedness, the land market of the 1990s led to market-based dispossession and increasing landlessness in rural Cambodia.

The 1992 Land Law is sometimes portrayed as a 'get rich quick' manual for the upwardly mobile (Shaun 1999). But in most cases this law was not even applied. From 1993-1998 more than one third of Cambodia land fell

outside the provisions of the 1992 Land Law, which was not explicit in respect of granting possible land concessions. In the prevailing post-war socio-economic context, the 1992 Land Law is highly problematic due to the convergence of several factors. The possibility 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. Anne Guillou shows that possibilities offered by the 1992 Land Law considerably increased land conflicts most notably on state land because the law did not offer a sufficiently strong juridical basis to resolve such disputes (Guillou 2006). As of 2002, George Cooper (2002) estimated that 200,000 poor Cambodians had fallen victim to on-going, as-yet-unresolved, cases of large-scale seizures.

Nature conservation efforts

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

Re-emergence of a concession [political] economy

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

As early as 1979, agreements on forest exploitation were made between Khmer Rouge leaders and the Thai military in the Northwest. The deal was clear; in exchange for forest exploitation rights, the Thai military gave the Khmer Rouge access to food aid in the camps and protected their refugees (Le Billon 2000; Hibou 2004). Approximately 15 Thai companies that were subject to a logging ban in Thailand were granted access to large forest areas in the Northwestern territories controlled by the Khmer Rouge (Gottesman 2003). The profits derived from these agreements were tremendous and allowed the KR to finance their resistance war against government and Vietnamese troops. But these concessions also benefited the government via taxes and royalties. A paradoxical logic of cooperation between the KR and the national army led these players to maintain a minimum level of conflict and instability in order to maintain access to forest rent (Le Billon and Springer 2007). This deal considerably reinforced relations between Khmer Rouge leaders, some political factions within the government, the Thai military, and businesses and politicians on both sides of the border (Hibou 2004). It further reinforced the legitimacy of Khmer Rouge power in the Northwest. It is on the basis of these first 'joint ventures' that forest concessions were [re]established in the mid-1980s, 100 years after they were first introduced in Cambodia

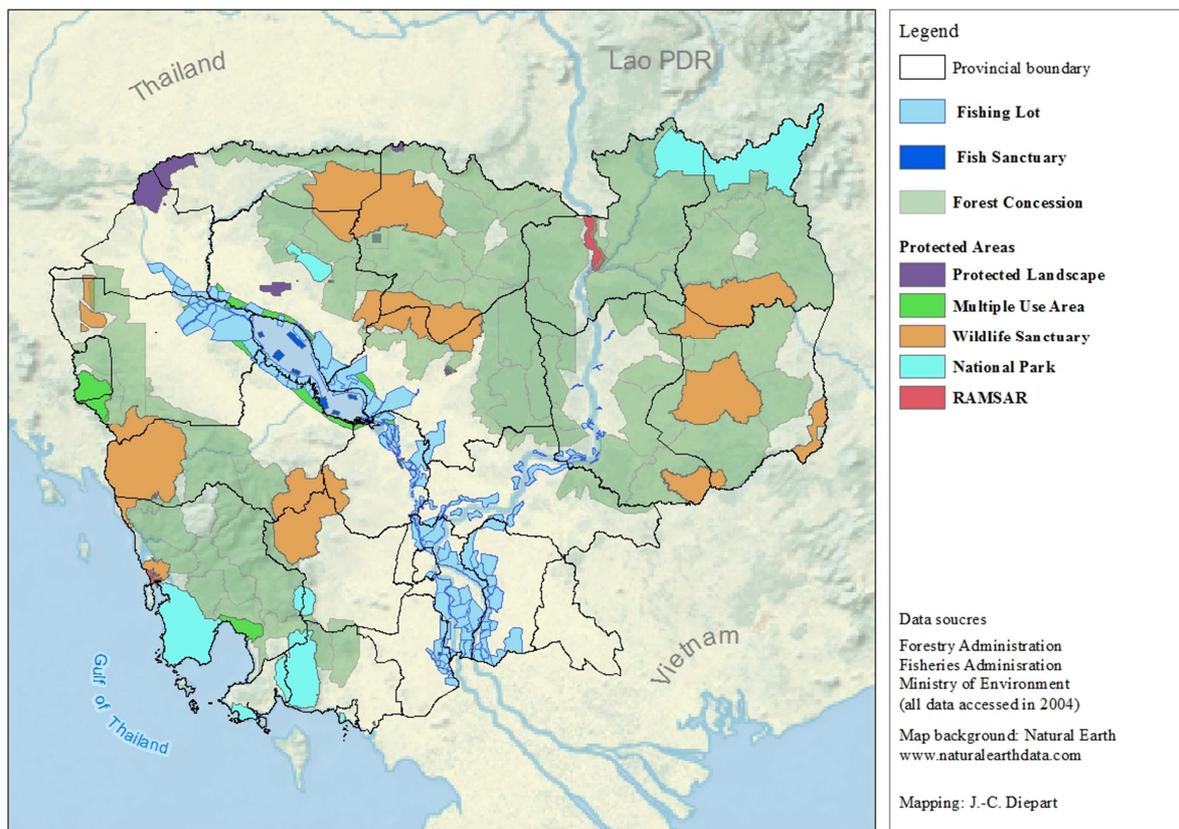
by the French (Le Billon 2000; Hibou 2004). Without much consideration of the implications, the international community encouraged the rationalisation of forest concessions with the objective of promoting public-private partnerships between state and private enterprises, to generate revenues and to finance post-war reconstruction efforts (Hibou 2004). But in the Northwest, these public-private partnerships were integrated within the prevailing post-war political economy and so contributed to reinforcing KR power.

The concession system, based on war-driven resources extraction, benefited from strong support from international organisations, mostly the World Bank, and became the main tenure system for natural resources management in Cambodia during the 1990s. The central objectives were to generate revenues for post-war reconstruction efforts, enable sustainable management of forest eco-systems, generate export revenues, put an end to the prevailing anarchy in forest management by introducing a 'transparent' concession system, but also to create and stimulate the diversification of the local economy activities (through private enterprises, e.g. sawmills and associated enterprises) in order to create value-added products from the timber sector and stimulate local employment (Hibou 2004).

But in the 1990s, the political context is one of post-war political struggles between factions of the new governmental coalition and the continued war with the KR in the Northwest. The 1993 elections brought to power a coalition of two parties: the Cambodian People's Party (the CPP that was politically opposed to the Khmer Rouge) and the FUNCINPEC (Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique, et Coopératif), led by Norodom Rannaridh who attempted to integrate the Khmer Rouge into the government as a manoeuvre to weaken the CPP within their coalition (Vickery 2007). The reconstruction of patronage networks to control the country generated violent political struggles. The need for both parties to generate revenue intensified the recourse to forest concessions. In just a few years, the public-private partnership ideal, created by the international community to assist reconstruction, resulted in a generalised and uncontrolled privatisation of state forests to serve the interests of political and military leaders (Global Witness 2007).

This context stimulated the auction of very large forest areas and fishing grounds through concessions (Map 2). Between 1994 and 2001, 39

percent of Cambodia was allocated to forest concessions (51 areas totalling 7,084,215 hectares, covering more than half of the forest resources at that time (Save Cambodia's Wildlife 2006)). In the fisheries sector, the total area of the fishing concessions (fishing lots) that were auctioned was 953,740 hectares, representing 5.2 percent of Cambodian national territory (McKenney and Prom 2002) (Map 2). The granting of agricultural concessions (palm oil, cassava, rubber and cashew) 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).



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

The development of a concession economy served to support three important processes. First, in a move to offer alternative livelihood solutions for demobilised soldiers, both of the coalition's prime ministers allocated land to the army. In seven provinces, in July 1994, 5 percent of

the Cambodian territory was allocated to the military (Hibou 2004; Global Witness 2007). This increased the militarisation of natural resource management. Second, the power became progressively centralised and controlled by Hun Sen (the CPP prime minister) at the expense of opposition leaders and even of his rivals within the CPP. The army and police were placed progressively under his control. This resulted in a fusion of economic, political, military, judicial and even religious power at all levels (Marchal 2004). Third, the activities initiated by concessionaires promoted the development of a myriad entrepreneurial activities involving resource extraction at sub-national level. These entrepreneurs were usually sub-contractors of main concessionaires but they were also well connected to sub-national authorities.

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

To address these problems, donors proposed a number of adjustments to the system: *i*) a timber export ban, *ii*) the suppression of the system of logging permits that had been reintroduced in 1994 and the termination of contracts when concessionaires failed to start operations for more than a year. However, as Béatrice Hibou indicates, these attempts to

improve the system of concessions never really questioned its exclusionary nature: the perpetuation of illegal activities by concessionaires, and the capacity of the actors to find means to by-pass any hindrances to their activity, sustained an incomplete and corrupted system of forest management (Hibou 2004).

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

In the 1990s, the revenue generated from timber exploitation was immense. Le Billon (2002) suggests that between 1989 and 2001 at least 10 million cubic metres of timber, representing a total value of USD 2.4 billion, was exported from Cambodia. But this generated only USD 120 million for the national treasury (Le Billon 2002). A significant fraction of

these informal revenues generated by forest exploitation and trade (estimated at between USD 40 and 80 per m³) was captured by provincial district authorities, members of the military and policemen, political party representatives and high-level civil servants (McKenney and Prom 2002). There was little incentive at sub-national level to actually put an end to the concession system. The strength of the system lay in its ability to give enough freedom and benefit to key sub-national actors so that no one really questioned it. In the end, this process was central to the consolidation of the whole political hierarchy of the ruling party from national down to village level.

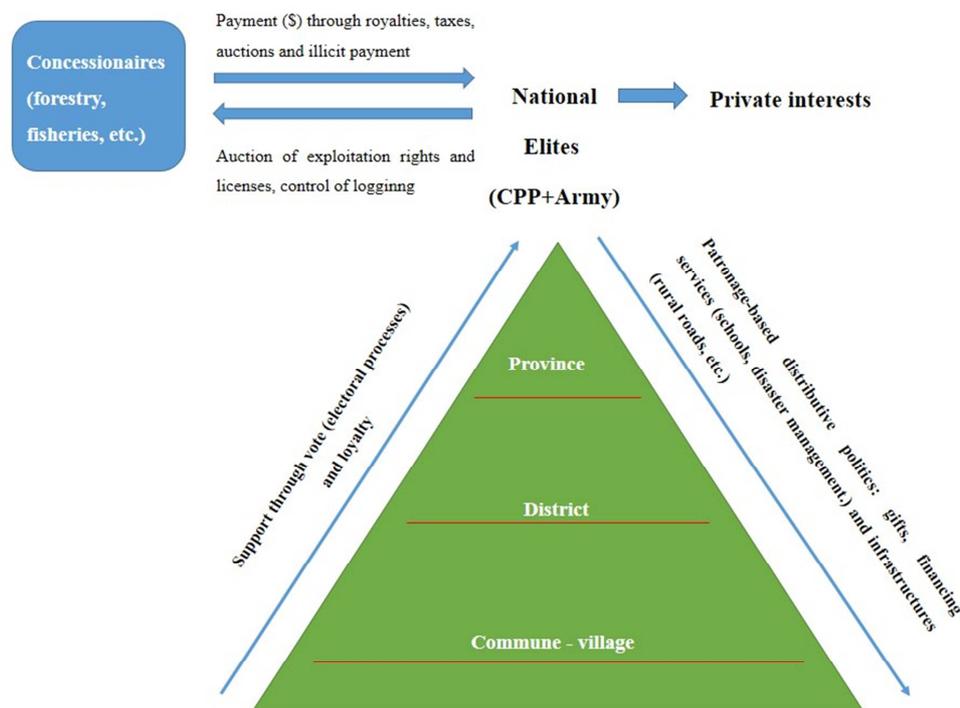


Figure 1 - Simplified outline of 'neo-patrimonialism' in Cambodia

Source: authors

The social and territorial dynamics revolving around large concession activities, which were decided at highest level of the state, allowed a variety of actors to become involved in similar processes at the sub-national level under the discretion of provincial, district or commune authorities (Diepart 2007b). In the 1990s, this dynamic patronage led to massive and illicit land acquisitions in the Cambodian countryside and to

de facto privatisation of state resources. The corollary was a decrease in access to the common pool resources, which had a profoundly negative impact on rural livelihoods especially those of the more vulnerable households (Van Acker 1999; Degen et al. 2000; Ahmed 1998; Diepart 2010).

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

3. LAND AND POVERTY IN CONTEMPORARY CAMBODIA

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

Land issues in the early 2000s

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

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

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

The contradictions in poverty reduction

In 2004, the poverty rate indicating the percentage of people in the country who were living under the poverty line³ of USD 0.53 per person per day was 35.9 (Ministry of Planning 2006). This rate differed between regions: it was 2.4 percent in Phnom Penh agglomeration, 20.9 percent in other urban agglomerations and 39.7 percent in those rural areas that account for 93 percent of rural poverty within the country.

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

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

A new poverty assessment confirms the decrease of poverty (World Bank 2013) although comparison with the 1994 version is difficult because of a change in methodology. Notably, the new assessment suggests that inequality (measured with Gini index on consumption) increased from 0.32 in 2004 to 0.37 in 2007, but that it decreased in every subsequent

³ The poverty line was estimated in 2004 at 2.124 KHR/person/day (0.53\$). Eighty percent of this value comprised ‘food basket’ items and the remaining 20 percent, first-necessity non-food items.

year to 0.28 in 2011. However, the report adds that the general premise that poverty is a rural problem has not changed. The actual gap between the rich and the poor has increased in absolute terms, and the majority of households that escaped poverty did so by only a small margin—they remain highly vulnerable to falling back into poverty (World Bank 2013).

In rural areas, an increasing number of studies show that interventions that aim to improve infrastructures and agricultural productivity, the emergence of non-farm labour opportunities and access to credit have principally favoured those households who have the capacity to grasp new market opportunities (Fitzgerald et al. 2007; Ovesen and Trankell 2014). This is because they have better resource endowments to purchase products to help them in new enterprises. The new opportunities offered by these developments have allowed a fraction of the peasantry to emerge through income diversification and small entrepreneurship. The large majority, however, remain excluded because they lack the resources or the networks. This evolution has gradually resulted in a differentiation of income formation mechanisms between categories of household. This is confirmed in a number of studies suggesting that the poorest rural households generate the larger part of their income through agriculture and natural resources (World Bank 2006). We do not obviously suggest that agriculture and natural resources are the reasons for poverty: this is a political economy problem and this observation reflects a related differentiation process.

Demographic increase and development challenges

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. Even though the annual growth rate of the population over the past decade has been lower in the central plains region, the population increase exacerbated the demographic pressure on land, which was already very high (Annex 2). In a wider perspective, the demographic increase, and in particular the effects of the post-war baby boom, has resulted in an annual labour force increase estimated at 220,000 to 300,000 people (Chan 2009; Lundström and Ronnas 2006). Agriculture has attained a limit in its capacity to absorb new comers in the job market, so the creation of viable and productive jobs in the farm and non-

farm sector is key and it is further challenged by the narrow development options in the secondary and tertiary sectors that rely mostly on garment factories, tourism and construction (Acharya et al. 2003; Jalilian 2008).

In a context of rampant rural poverty, constrained agrarian transition and low public investment⁴ in agriculture, the pressure on agriculture and on the peasants is immense. The sector needs to address the increase in rural population, the food consumption diversification of the urban population, which has grown proportionally faster (Annex 2), and policies for generating surplus export rice (Diepart 2011).

⁴ It is important to remember the formal interdiction against state subsidies for agriculture as set out in the World Trade Organisation agreement signed in 2004.

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

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

A cornerstone: the 2001 Land Law

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

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

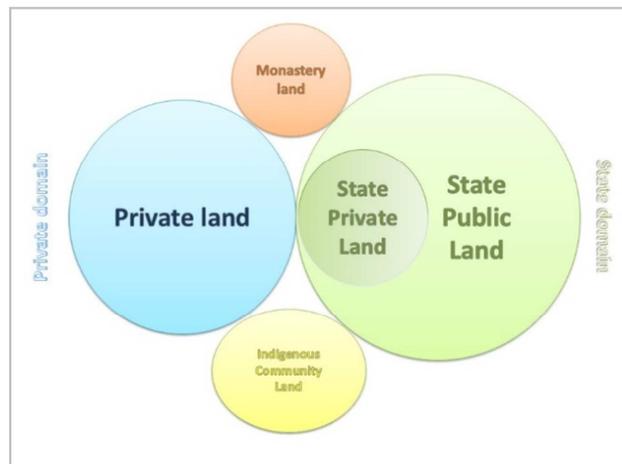


Figure 2 - Land property categories under the 2001 Land Law

five different domains of property (Figure 2). The land continues to be owned by the state unless its ownership has been legally privatised. This 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 privatised. The private domain includes all land that has full legal private ownership. There is

also ownership of Buddhist properties that exist within the premises of Buddhist monasteries, and the indigenous community land properties where indigenous 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).

The implementation of the Land Law embraced a number of 'new' formalisation processes of land property rights along paths that are summarised in Figure 3. Central to these processes is the formalisation of private or collective property rights from state property (domain) and the differentiation between state private and state public land. This is highly contentious because concessions have remained a central element of state land management in Cambodia (despite the fiasco of the 1990s). Concession is a legal right established by contract with competent authority given to any natural person to occupy and use a state private land for any specific purpose. There are three types of land concessions: Social Land Concessions (SLCs), Economic Land Concessions (ELCs), and use, development and exploitation concessions (UDEEC). The latter is governed by a separate law.

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

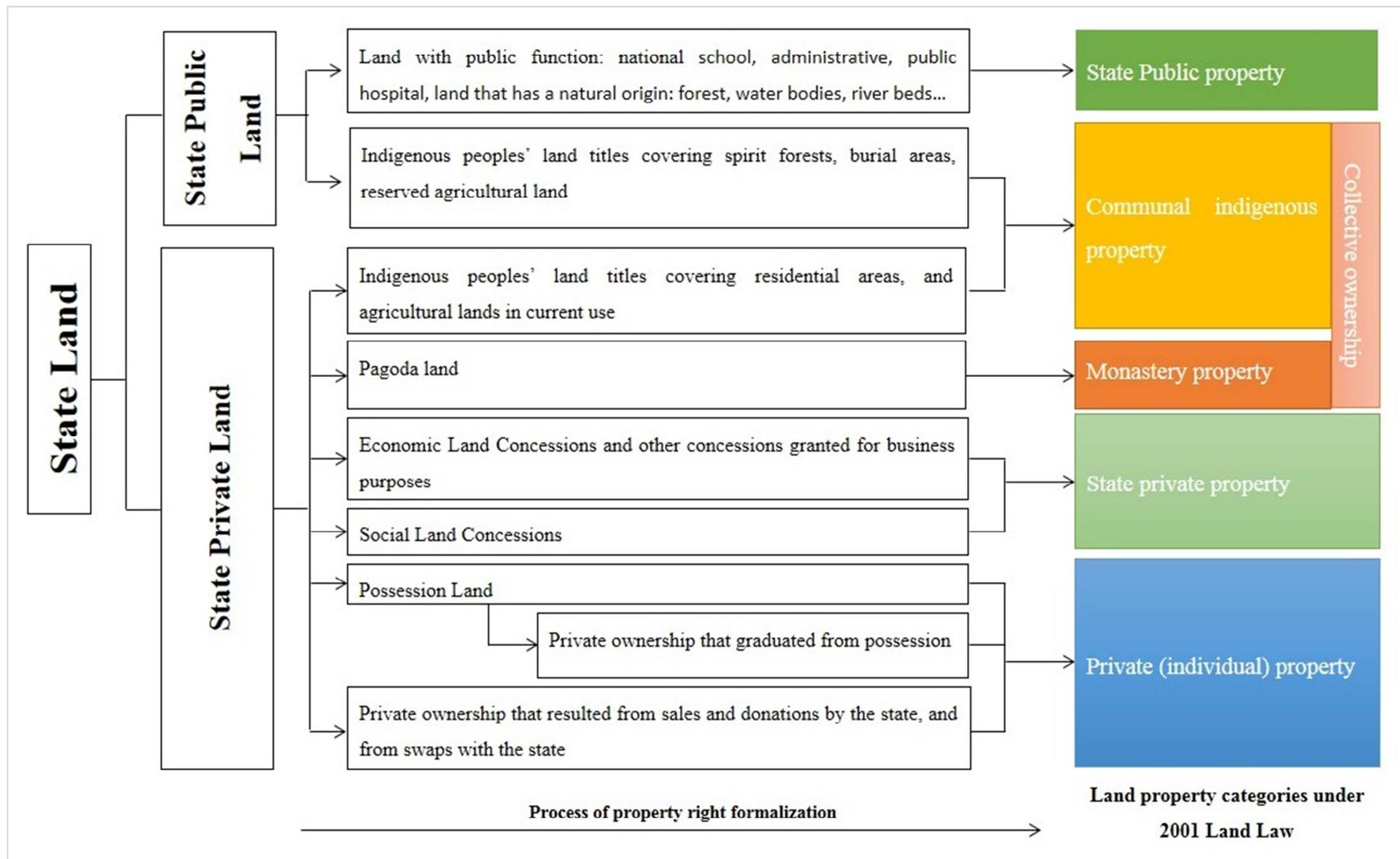


Figure 3 - Processes of property rights formalisation under the Land Law 2001

Source: authors

Looking into land right formalisation processes: the ‘land control matrix’

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

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

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

- ⇒ Access: right to enter a defined, physical area
- ⇒ Usufruct: right to harvest the product of a resource
- ⇒ Claim: right to regulate internal patterns of use or to transform the resource
- ⇒ Possession: right to exclude other people from using the resource (concessions right are somewhat similar)
- ⇒ Ownership: right to use/keep land or resources at any time.

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

- ⇒ Public: when the rules are common to all and applied in an undifferentiated manner

- ⇒ State: right to land/resources is sanctioned by [a representative of] the state
- ⇒ Co-management: right to land/resources are co-decided by the state and community according to an agreement or based on a contract
- ⇒ Community: right to land/resources is decided by a community (unit of decision)
- ⇒ Private: right to land /resources is managed by one individual/family.

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

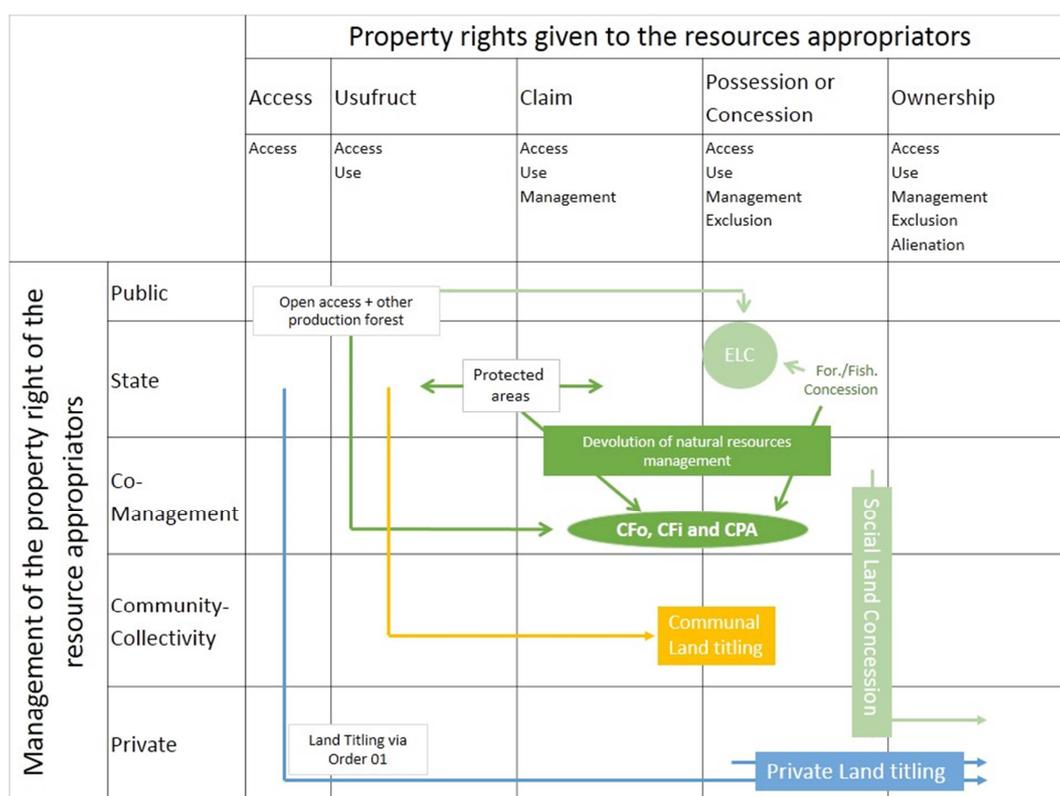


Figure 4 - Significant reform of land tenure regimes presented along with a revised land control matrix.

Source: authors (adapted from Leroy et al., 1996).

5. LAND REFORMS IN LOWLAND CENTRAL PLAINS

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

Land access differentiation in the central plains

It is essential to understand the mechanisms of differentiation that are active in the central plains so as to better understand the capacity of Cambodian peasants to address the challenges mentioned earlier.

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

To shed more light on differentiation in land access, we base our argument here on the results of household surveys all conducted at least partly in villages in the central plains. They include Takeo, Kampong Speu, Kampong Thom and Kampong Cham (n=1,443) between 1999 and 2003 (Diepart et al. 2006), in Kampong Thom (n=229) between 2004 and 2007 (Diepart 2010) and in Battambang between 2008 and 2011 (n=124) (Dupuis 2008). During these surveys the total landholding area of households was systematically quantified based on the mode of acquisition of each and every household plot. The results from these surveys generated different results and values, and a representative example is presented here (Annex 3).

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

markets. The actual path of differentiation is obviously organic as it results from the interaction and synergy of these processes.

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

A significant part of agricultural landholdings was directly acquired by the state (*Krom Samaki*) in the 1980s via processes we have indicated earlier. The point to note here is that households with larger land holdings acquired their land mainly through this redistribution. Those who were able to acquire more land during *Krom Samaki* (because the household had more active labour and/or because it could appropriate cattle or equipment possessed before the war) are usually those who today have larger landholdings (i.e. several hectares). This is always confirmed by a highly significant correlation between the age of household chiefs and the area size of the household agricultural landholding. Conversely, households with smaller landholdings are young households and have acquired their land mainly through inheritance, usually from elders who themselves received land from *Krom Samaki* (in all the case studies the area of land received from *Krom Samaki* and by inheritance is negatively correlated). The double age-biased phenomenon of land concentration and atomisation is observable in all cases and confirmed in studies conducted in similar agro-ecological environments (Ballard and So 2004). It follows a Chayanovian demographic differentiation cycle of the households in that the landholding size of a household follows the evolution of the age dependency ratio of the household. It deviates from the ideal theorised by Chayanov for reasons evoked earlier (i.e. irregularities in the *Krom Samaki* land distribution). The reason why the legacy of this distribution still lingers is because the 2001 Land Law blocks any acquisition of land not possessed before 2001 (Article 30), and has somehow fixed the important patterns of land distribution between households.

Negotiated land acquisition at the edge of rice hinterlands

Land transfer in the period that followed the distribution by *Krom Samaki* was not well regulated particularly in the 1990s. We suggested earlier the possibility for certain households to access land in the forest periphery of

the village kept as reserved land by local authorities. Access to this peripheral land usually 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 forest land clearance 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 market

Land purchase and sale markets are substantially wealth-biased. The ability of households to acquire land through land purchase depends on their capacity to mobilise capital. In all of our surveys, there was a highly significant correlation between total income (and other wealth proxies) and the total purchased land area. Likewise, there was always a significant correlation between total landholding size and total area size of purchased land. Compared with land purchase transactions, land sales are less frequent. Approximately 75 percent of all land sale transactions were motivated by factors that were non-productive (health reasons, basic household expenditure and debt payment) and were propelled by household vulnerability. The other 25 percent or so of land sales were motivated by productive factors, generally to provide the up-front capital needed to launch a non-farming activity.

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

In opposition to the theory, land markets do not lead to a more equitable distribution of land between households. Land-scarce households purchase land to increase the marginal value of their labour only if they can afford it. Land-abundant households will usually sell land to decrease

their marginal costs. Land markets are embedded in the local social relations and are controlled by economic power. Also particularly important is the role that urban (absent) landowners have played in the acquisition of state land through the market.

Nevertheless, through land rental markets peasants are involved in a system of access to land that strikes a better balance between land distribution among households and their capacity to actually cultivate it. This is crucial in a context where land-based food security is not easily ensured due to land fragmentation and difficulty in gaining access to additional land through clearance or purchase. Transfers of secondary rights through land leases among peasant households seem to promise equitable access to land since they are embedded in collective security mechanisms activated by peasant communities themselves (Diepart 2010).

Market-based distributive land reform: private land registration

Rationales

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

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

Legal aspects

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

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

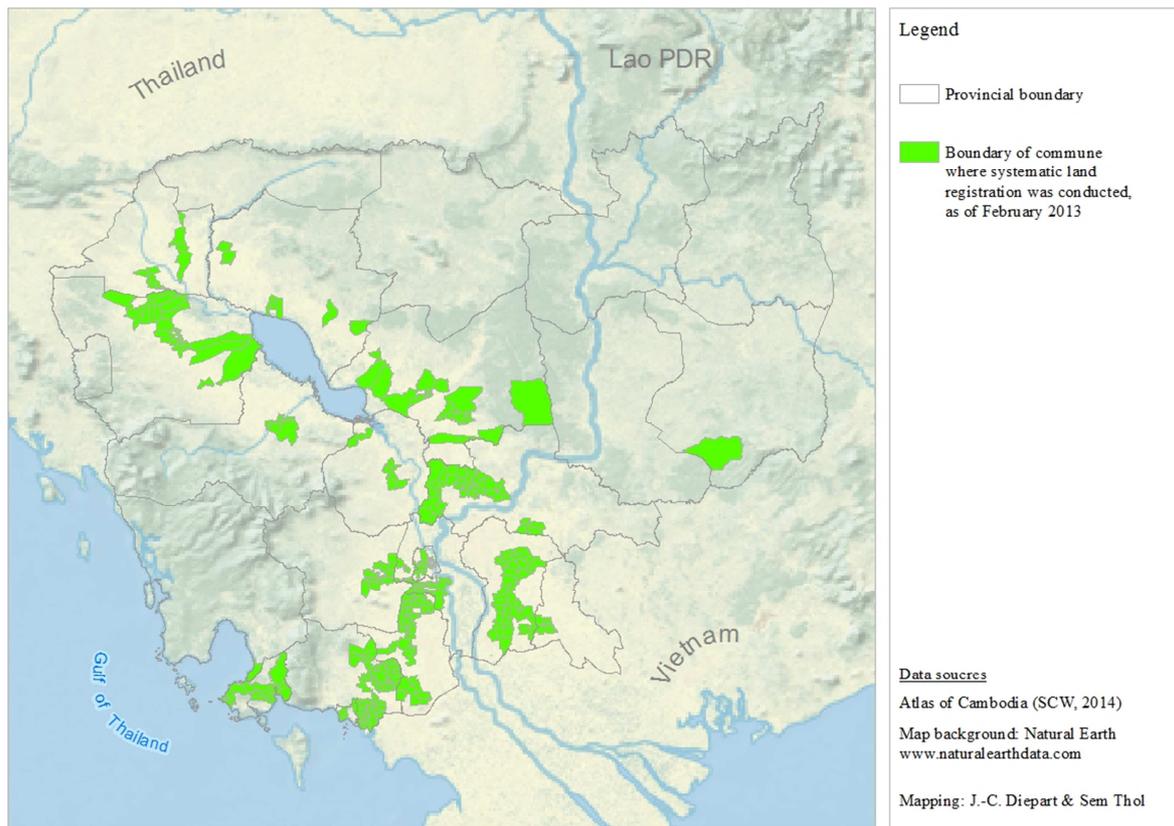
The systematic land registration (SLR), detailed in another sub-decree (Royal Government of Cambodia 2000), works through the establishment of a cadastral index map. It is a system intended to complement the

sporadic land registration by speeding the process up. SLR is a compulsory process meaning that 'in the adjudication area, every person has an obligation to participate and co-operate in demarcation and adjudication by giving oral testimonies, submitting documents, any other evidence and information' (Article 5) (Royal Government of Cambodia 2000). The registration is 'systematic' in that a team of surveyors from the cadastral administration are sent to a given commune where they register all residential and agricultural plots. The SLR procedure (Annex 4) differs significantly from that of the sporadic land registration and mobilises important technical and human infrastructures. The operations are undertaken by the Land Management and Administration Project (LMAP), now called the Land Administration Sub-Sector Program (LA-SSP), a multi-donor government project supported by Germany and Finland. The World Bank withdrew from LMAP in 2009 for reasons that will be later explained.

Outcomes

As of December 2012, SLR delivered 2.1 million titles to 625,000 families. The process has accelerated over the years thanks to technological improvements but the areas where titles have not been delivered remains considerable. Experts are reluctant to give a completion date, but a figure of 15-20 years is usually mentioned.

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



Map 3 - Location of areas (communes) where systematic land registration had been conducted as of February 2013

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

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

The argument made here about spatial exclusions in land titling at the national level is echoed by other researchers who have examined these issues at lower levels, i.e. at commune level. Ballard (2010) suggests that in these central areas, titling efforts were targeted towards what he calls 'high capacity areas', in and around rural market centres, where transport and credit services were more developed or in rice farming areas where land tenure was more stable and could thus provide more benefits relative to the time and expense of issuing titles. In such areas, titling benefits of developing formal land markets could be optimised. In Kampong Thom, a case study showed that the titling efforts were concentrated in the infrastructure-rich central area whereas the forested periphery was purposely avoided (Diepart 2007b).

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

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

As of today, it is also very difficult to evaluate the impact of titling on land productivity. Rice production and productivity has increased over the period during which land titles were delivered (Annex 1) but this increase

has been the result of a convergence of elements such as the policy push for the adoption of improved rice varieties, the intensification of labour and other inputs, and improved irrigation. With existing datasets, we cannot attribute increase to the 'land title' factor alone. However, a number of case studies suggest that the impact of titles on land productivity is rather limited (Diepart 2007b; Biddulph 2010; Grimsditch, Kol, and Depika 2012). As for credit, there are some divergences in views held, but it is a fact that most micro-banks and microcredit institutions in Cambodia issue credit against a land possession certificate approved by village and commune authorities (a title is not required).

6. MIGRATION AND THE MOVE OUT OF POVERTY

The extension of landholding through the principles of acquisition ‘by the plough’ is no longer possible at the periphery of most villages on the floodplain even if this has been an historical trend in the life of Cambodian peasants. This process is constrained by law and by the privatisation of the commons. In a context of demographic growth, land atomisation through inheritance combined with land acquisition/sale, this has led inevitably to land concentration. About 25 percent of households live with less than 0.5 ha of land, which is not enough to sustain a family throughout the year (Taylor 2011). So what options do land-scarce households have in the central plains? Not many, but there is at least one which has been of considerable importance over the past 15-20 years.

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

Moving to the city

A relatively important migration is the movement from rural villages to the city, mostly to Phnom Penh. According to the National Institute of Statistics (2009), rural-to-urban migrants represent 28 percent of the total migrant population. Migrants to Phnom Penh come from every

corner of the country but migration follows a basic 'gravity model' in that there are concentrations of migrants from provinces with large populations that are close-by, most notably Kampong Cham, Svay Rieng, Prey Veng and Takeo (Ministry of Planning 2012). Migrants to Phnom Penh are overwhelmingly young (the median age is 25 years). A greater number of young females migrate to Phnom Penh than any other age/sex group, reflecting the dominance of the garment industry in the city and in the national economy; 30 percent of migrants are females aged between 15 and 30 years.

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

The invisible flow: rural-to-rural migrations

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

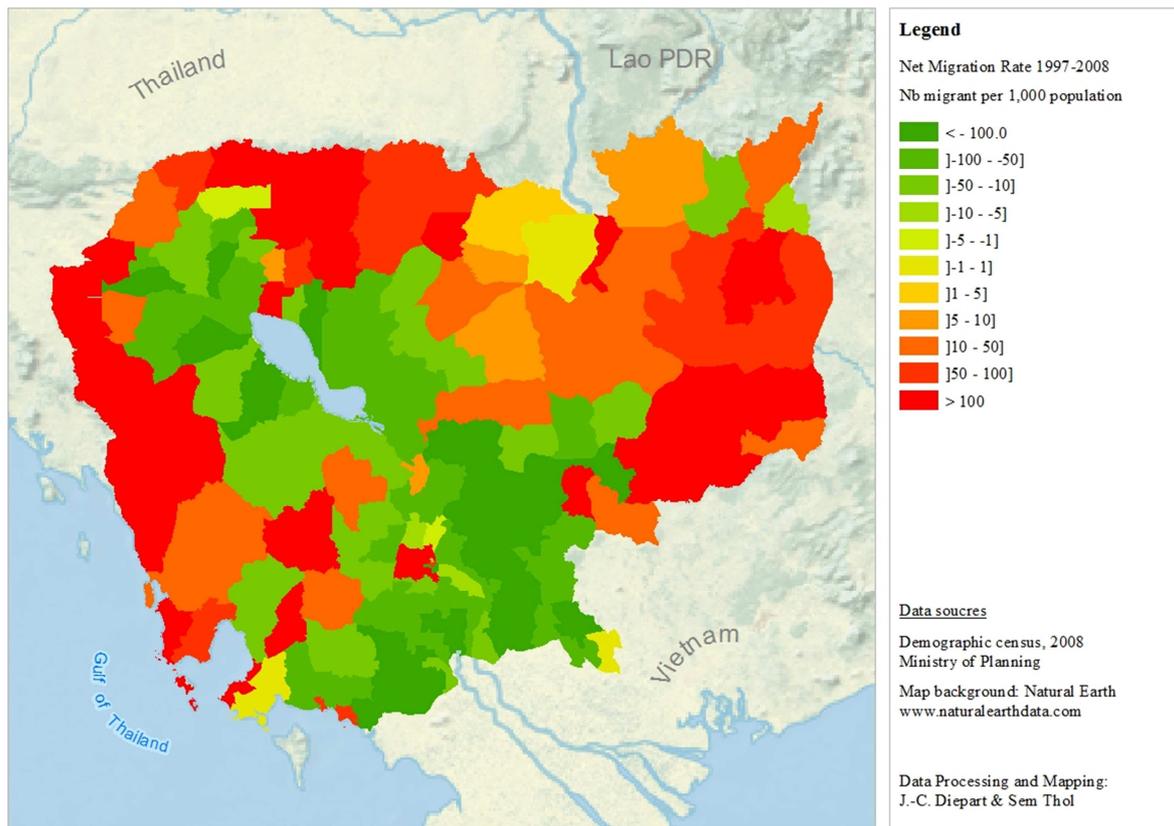
To shed light on internal migrations, we have framed the analysis to the period 1997-2008 in order to form an accurate picture of recent trends. The 2008 demographic census dataset allows us to measure in- and out-

migration movements at district level⁵, and to establish a 'net migration rate' index, which is the net number of migrants (in-migrant - out-migrant) per 1,000 population for each district: a positive value of 'net migration rate' signifies that more people had entered (influx) the district than had left it from 1997 to 2008, while a negative value means more people had left than had entered (outflow) the district during the same period. We then mapped this net migration rate to render the information spatially explicit.

Map 4 shows quite a striking contrast. The districts with a positive migratory dynamic (shown in red on the map) are rural districts located at the periphery of the central plains, on both the east and west sides of the Tonle Sap plain and the Mekong delta. In-migration has been particularly important in the Northwest, and reflects a movement of populations, mainly from the Mekong delta and Tonle Sap basin, suffering land shortages in these rice growing lands and seeking to acquire land in the forested areas near to the border between Cambodia and Thailand. Urban centres and cross-border towns (Phnom Penh, Siem Reap, Kampong Cham, Sihanoukville and Poipet) also have a clear positive net in-migration rate. These districts are characterised by high population growth rates indicating that migration plays an important role in the overall population change in those areas. The districts with a negative migratory dynamic (shown in green on the map) are essentially located in the Cambodian central plains (Tonle Sap plain and Mekong delta). Overall, these trends suggest a migration-related loss of population from lowland rice-based to upland regions (rural-to-rural) on the one hand and to urban centres (rural-to-urban) on the other⁶.

⁵ During the enumeration, people were asked if they had always been living in the current place of residence, and if not, how long they had been living in their current place of residence and what district they previously resided in. These questions and the relevant dataset form the basis of this permanent migration analysis.

⁶ Note that the significant number of rural-to-rural migration events that take place between communes within the same district are not visible here in this district-level net migration rate.



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

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

that migration is primarily driven by the search for agricultural land. The number of migrants involved in agricultural wage labour (5 percent) and non-farm employment (29 percent) became proportionally more significant towards 2007 indicating that the employment of migrants has shifted from peasant farming to wage employment and service trades as less land is available for agricultural expansion.

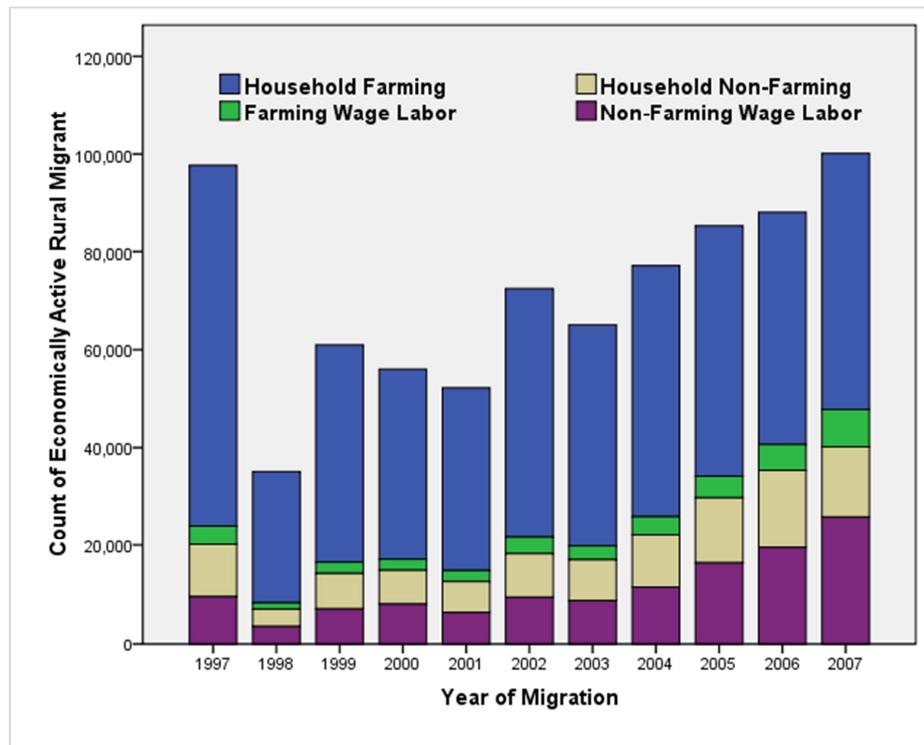
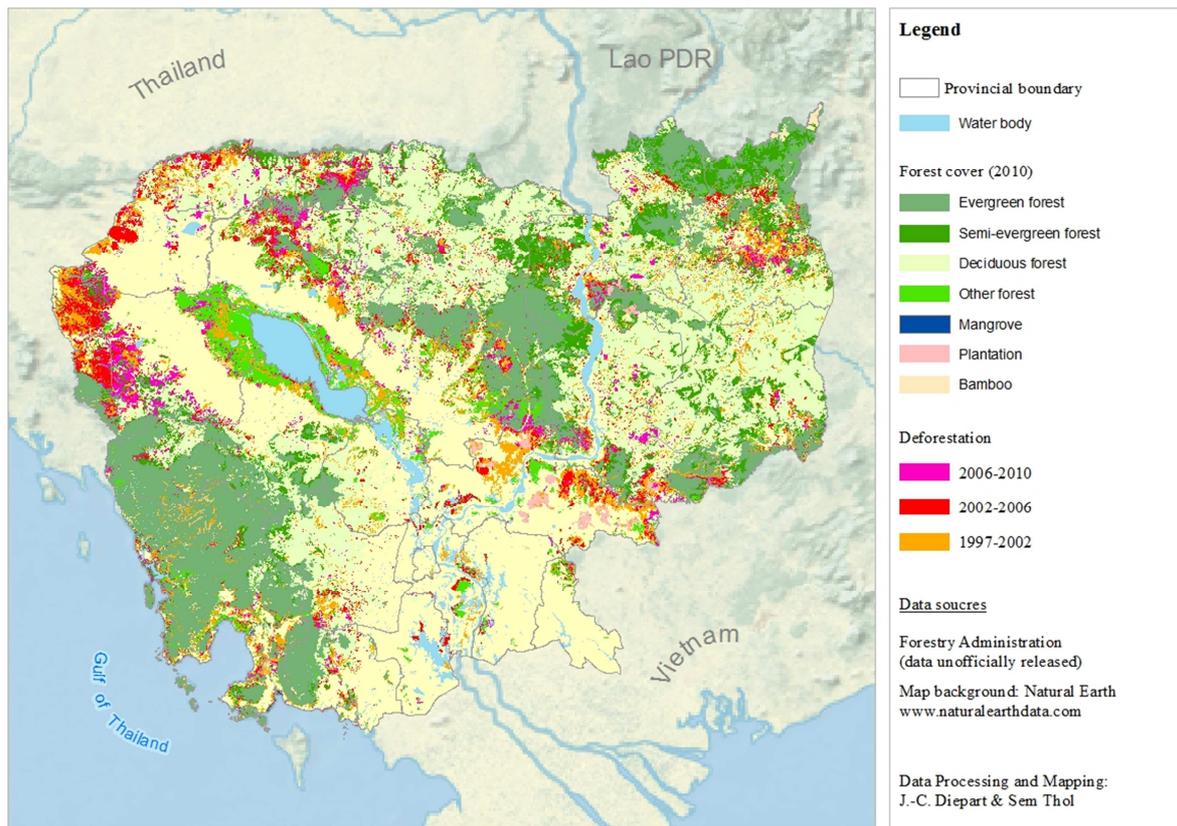


Figure 5 - Labour occupation of the migrant population (1997-2007) living in rural areas

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



Map 5 - Deforestation in Cambodia from 1997 to 2010

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

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

7. LAND REFORMS IN PERIPHERAL UPLAND AREAS

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

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

This has resulted in a huge population living on land that they appropriated after 2001 in respect of which they have virtually no land tenure security under the 2001 Land Law institutions. This is a problem that local authorities have addressed locally with local rules. However, elites close to power and the concessionaires have been perfectly aware of this situation. With classic propaganda the government defends the concession model by blaming ‘illegal’ occupants for the grabbing of state land.

State land management

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

A sub-decree foresees the mechanisms for state land management and state land classification (Royal Government of Cambodia 2005c) but in

reality it has proceeded only marginally due to a lack of interest and resources on the part of the government. The lack of government commitment to state land mapping and classification was highlighted by the World Bank in a landmark LMAP review report in 2009:

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

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

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

Large scale investments in agriculture: economic land concessions

Rationales

After the fiasco of concessions management in the 1990s the government, with the support of donors, reintroduced the idea that [agro-industrial] concessions could be (will be) central to inclusive development in Cambodia. If the idea and rationales now are as they were in the past, the implementation of Economic Land Concessions results in new types of large-scale investments in rural Cambodia. The idea of a concession is presented eloquently as a multi-benefit public-

private partnership outlined in the sub-decree on Economic Land Concessions first released in December 2005 (Royal Government of Cambodia 2005b). Economic Land Concessions were expected to stimulate agro-industrial activities requiring a large capital investment that the state did not have, to develop so-called 'under-utilised' land. It would increase employment in rural areas, offer new opportunities for labour and employment in the countryside, and encourage local economic diversification through small and large investments upstream and downstream of the concession. It would also generate state revenue at national and sub-national levels. The rhetoric is not essentially different from what was intended decades earlier in respect of the forest and fisheries concession models.

The idea of bringing large-scale investments into the Cambodian countryside was suggested and supported by the World Bank. In a context of rising interest in farmland (Deininger et al. 2011), which echoes the influential World Development Report 2008 that supports the reintegration of agriculture as a key growth driver in developing countries (World Bank 2007b), the Bank saw an opportunity to attract private investment and promote large-scale agricultural operations. While acknowledging the importance of securing property rights and the large endowment of Cambodia, the document suggests that *'Other improvements in the general and rural investment climate are essential to increasing the competitiveness of agriculture and other rural enterprise activities'*. The report further suggests *'that foreign agribusiness investment which can bring capital, technology and market access is negligible and focused mainly on activities such as plantations for pulp and paper which generate very limited employment, or informal traders who source raw material for processing in neighbouring countries'*⁷ (World Bank 2007a).

For the government of Cambodia, Economic Land Concessions represent an opportunity to reinvigorate the very profitable concessions economy after the collapse of the forest and fisheries concessions in the 1990s. The opportunities for foreign investment that Economic Land Concessions (ELCs) offer were also seen as a political tool to engage Cambodia in

⁷ This orientation by the World Bank is suggested in an excellent literature survey on ELCs, see Sperfeldt et al., 2012.

ASEAN integration by allowing neighbouring countries (states and companies) to invest in the Kingdom.

Legal aspects

The Land Law of 2001 stipulates that Economic Land Concessions should be allocated to companies or individuals for the purpose of agro-industrial development. ELCs were limited to land measuring no more than 10,000 ha granted for maximum of 99 years. The relevant sub-decree on Economic Land Concessions was released in 2005 (Royal Government of Cambodia 2005b) to set the criteria and conditions which have to be fulfilled for the granting of ELCs and to monitor the implementation. ELCs are granted on the receipt of competitively solicited proposals by the Ministry of Agriculture, Fisheries and Forestry (MAFF), but unsolicited proposals may also be considered. ELC contracts are subject to payment on the part of the concessionaire. There are no conditions in respect of who can apply for an ELC and no restriction on foreigners obtaining concession contracts. An ELC must be developed within 12 months after issuance otherwise the contract will be cancelled. Additionally, the sub-decree stipulates a number of safeguards to avoid adverse impacts on the local population, such as the production of a land use plan, designed and approved locally, and solutions for re-settlement. In addition, environment and social impact assessments must be conducted, and public consultations held with local authorities and residents. For the purposes of this review process, the newly established Technical Secretariat, with representatives from eight ministries and other government institutions, was to support contracting authorities including requests for a voluntary reduction of land concessions exceeding the new limit of 10,000 hectares. The Technical Secretariat was tasked with a clear timetable to create a logbook containing all relevant information about concessions granted prior to the sub-decree (Sperfeldt, Tek, and Chia-Lung Tai 2012).

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

but, starting in 2008, the government has granted Economic Land Concessions inside Protected Areas and Protection Forests under the jurisdiction of the Ministry of Environment and Forestry Administration, respectively.

The implementation and lack of control in ELC implementation put pressure on the prime minister to sign a moratorium on ELCs in May 2012 (Royal Government of Cambodia 2012), ahead of the commune election. This moratorium and its aftermath give the context of this research. Before we turn to it, we will take stock of the ELC experiment up to 2012.

Data collection and processing

The implementation of ELCs is subject to vast debates across the country and is monitored by different institutional actors. Different datasets using different methods are available, each having their own strengths and weaknesses (Chouquer 2012). For the purpose of this research, we have worked with two datasets: one by LICADHO (Cambodian League for Promotion and Defence of Human Rights), a national Cambodian human rights organisation active since 1992; and the other by Open Development Cambodia (ODC), an Open Data website, conceived by the East-West Management Institute. Both organisations have developed their datasets from ELC data available on the MAFF website which includes information about companies, the purpose of concessions and UTM (Universal Transverse Mercator) coordinates (www.maff.gov.kh). However, this information is not up-to-date (98 concessions only are inventoried) and the geographic attributes are sometimes incorrect. LICADHO compilation of data is based on an extensive network of offices and activists working in the field; the information they provide is usually more realistic as to the location and size of ELCs in question. The Open Development approach is to compile all of the documents that are publically available for each ELC (relevant sub-decrees and reviews of contracts with the company name and address, the purpose of the concession, timeframe, etc.).

We have been engaged in work to consolidate the best of both datasets into one database, working on both the spatial and textual dimensions⁸. Our compilation still suffers from a number of limitations. First, it contains only the ELCs for which spatial information is available, but the ODC website clearly indicates that there are a number of other ELC contracts

⁸ This consolidation remains a work under construction.

for which there is no spatial data. Second, it alludes to information that is currently unknown (date, agro-industrial purpose, concessionaire, etc.) which could not be obtained from either LICADHO or ODC. Third, it presents the existing timeline as of end 2012 and does not therefore indicate those ELC contracts that were cancelled. Despite these limitations, however, we trust that the dataset gives reliable information on the spatial magnitude and nature of the dynamic. This working paper presents the data available as of July 2014 and we suspect that the conclusions we draw will need substantial revision when the database is fully updated. Things might be different when we conduct a more detailed spatial analysis.

Outcomes

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 interest of actors concerned to always provide full clarity on those deals. In inventories made public by the government, not all the concessions are inventoried (Boyle and Titthara 2012b). Some ELC contracts were also terminated by MAFF but the procedure for these cancellations does not seem to follow a systematic path. Furthermore, 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). These problems are further exacerbated by the fact that, up until 2008, provincial governors were still authorised to grant ELCs of less than 1,000 ha. After the revocation of this provision in 2008, some provincial ELC contracts were cancelled, some were re-formalised at national level but some continued to operate without clear recognition from the national level.

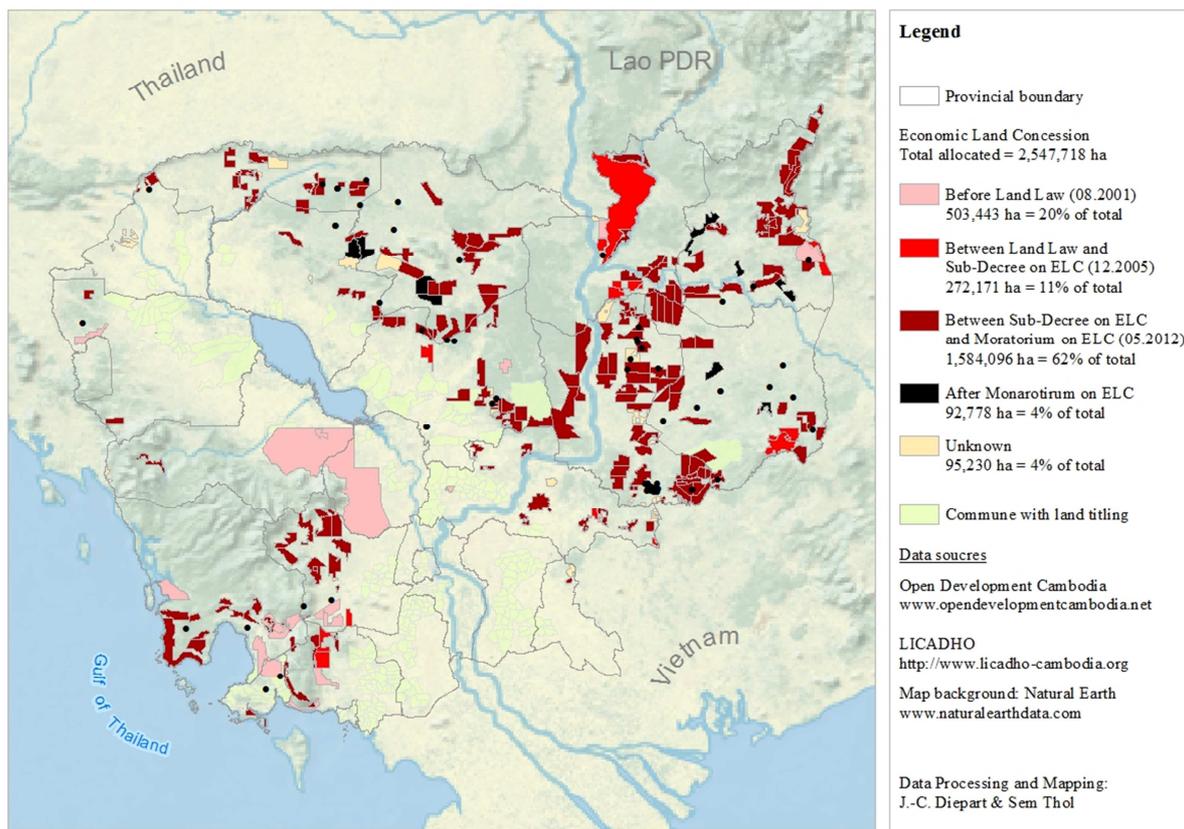
Given all the limitations indicated earlier, our database suggests that 2,541,118 ha of land had been granted as ELCs by the end of December 2012. This includes 271 on-going contracts (excluding ELCs that were cancelled). Among those, 86 ELC contracts (32 percent of the total) have an area size exceeding the legal limit of 10,000 ha. All ELCs are located in the peripheral uplands on both sides of the Tonle Sap Great Lake (Map 6) with a higher concentration in the north/northeast. Map 6 also clearly indicates the spatial disconnect between ELCs and the titling areas. There

might be marginal overlap in three provinces (Kampot, Kampong Thom and Mondulkiri) the extent of which it is impossible to quantify as we do not have the accurate location of the land titling adjudication areas.

There are four different phases in the granting of the ELC contracts⁹ (Map 6). 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 (Figure 6) to Cambodian investors (Figure 7) on production/conversion forestland (Figure 8). These concessions cover 20 percent of the total area attributed. Noticeably, the Pheapimex concession in Kampong Chhang and Pursat province covers 315,000 ha, accounting for nearly half of the total land conceded before 2001. Pheapimex is a well-known concession company owned by the Cambodian Lao Meng Khin and his wife Choeung Sopheap (also known as Yeay Phu). According to Global Witness (2007), Pheapimex is Cambodia's most powerful company, controlling 7.4 percent of Cambodia's total land area through its logging and Economic Land Concessions.

The second phase, between the Land Law and the promulgation of the ELC sub-decree, the legal framework for ELCs was not fully in place. A small number of ELCs were granted (11 percent of the total) in a manner very similar to that in the previous phase (Figures 6, 7 and 8). With the release of the sub-decree in December 2005, and the setting up of the Technical Secretariat and *ad hoc* provincial committees (Sperfeldt, Tek, and Chia-Lung Tai 2012), the number of ELC contracts has increased and the nature of ELCs has changed (Figures 6, 7 and 8).

⁹ For a detailed review of the number of contracts and cancellations over these periods, see Sperfeldt et al., 2012



Map 6 - Evolution in the granting of ELCs in Cambodia

Starting in 2008, the increase in demand and prices for rubber fuelled a rush for rubber production in Cambodia. The political economy of these investments has been discussed elsewhere (Global Witness 2013) but our dataset shows that 22 percent of the total ELC area was converted to rubber production by Vietnamese (15 percent) and Chinese (7 percent) companies (Annex 5). The rubber lobby seems powerful because, starting in 2008, Economic Land Concessions for rubber production were granted in Protected Areas (under the management of the Ministry of Environment) and in Protection Forests (under the management of the Forestry Administration). In 2012, the number of ELCs dipped sharply as a result of the moratorium on ELCs ordered by Prime Minister Hun Sen, which suggests a real engagement of the government in halting the granting of new ELCs. Despite the moratorium, however, a number of ELC contracts were signed after May 2012 on the grounds that permission for this had been given prior to the Order 01. Information gathered by

ADHOC shows that at least 33 ELCs were granted after the announcement of the moratorium (ADHOC 2014; Zsombor and Aun 2012).

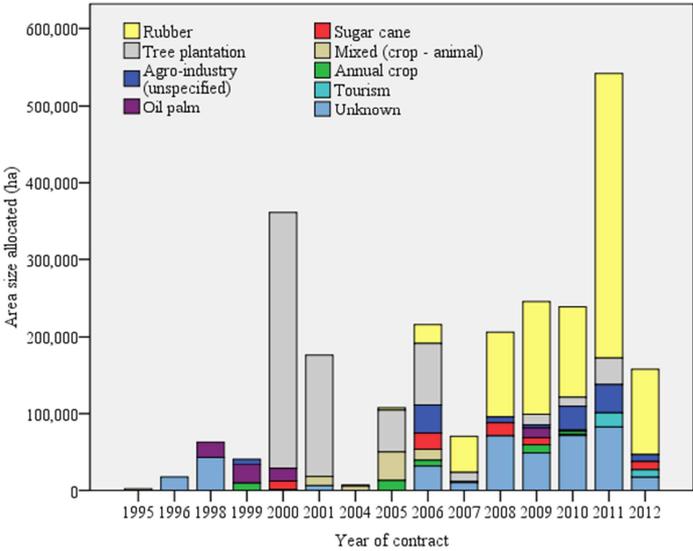


Figure 6 - ELC area size allocated per year and per purpose

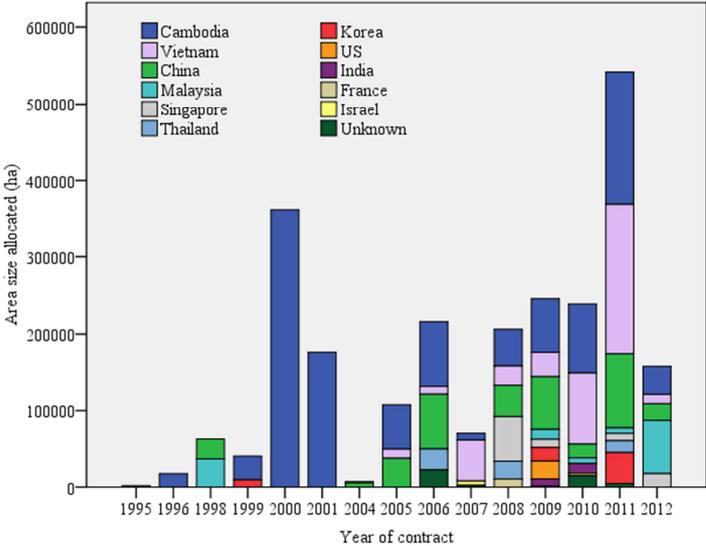


Figure 7 - ELC area size allocated per year and per nationality of concessionaire

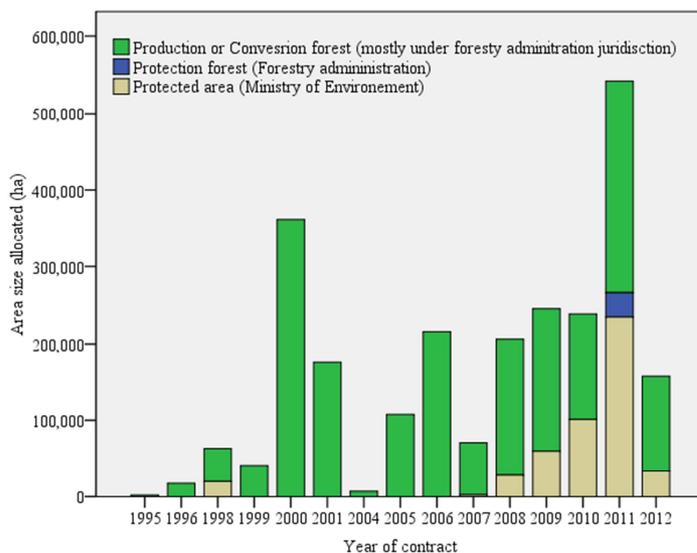


Figure 8 - ELC area size allocated per year and per type of land jurisdiction

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

Public consultations and social and environmental impact assessments that should be carefully undertaken before any agreement is signed are rarely conducted properly, if at all (Sperfeldt, Tek, and Chia-Lung Tai 2012).

Economic assessments of the concession activities have also underestimated or simply ignored an evaluation of the opportunity costs of the investment. These opportunity costs include i) the value-added that would have been created if the land had been left to peasants and ii) the distribution of this value-added between farmers, the shareholders (in the case of the company-driven plantation), the local wages, the state and the credit institutions (Dufumier 1996). Hansen and Neth (2006) have clearly shown that under most scenarios concerning the conversion of natural forest into plantations, the value-added created by peasant-driven collection of forest products, combined with sustainable exploitation of timber and non-timber resources, is actually higher than value-added

created by large-scale plantations. Likewise, surveys comparing the value-added generated by rice perimeters with a peasant-driver multi-functional use in the Tonle Sap floodplain has also revealed that peasants are more efficient in generating value-added per hectare, and that the distribution resulting from the peasant mode of management is more inclusive (Evans et al. 2005; Diepart 2007c, 2010).

But during the implementation of these large-scale agricultural investments, a number of irregularities are also reported as routine issues. In certain instances, ELC contracts are signed to by-pass the 2002 logging ban on timber, 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 option). The case of the rubber plantation in Tumring (Kampong Thom) made jurisprudence on the matter (Global Witness 2007). Very often in these cases, logging operations are conducted well beyond the boundaries of the concession area (Hibou 2004).

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

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

Over the past decade the implementation of ELCs has initiated a huge increase of land conflicts revolving around the question of land dispossession and forced eviction (Schneider 2011). These violations have

been discussed and analysed in a number of very good reports (ADHOC 2013; Cambodian Human Rights Action Committee 2009). In early 2014, LICADHO indicated that, since 2000, Cambodia had passed the ‘shameful milestone’ of half a million land conflicts across the provinces it monitors, most of them representing people in opposition to concessions (Cuddy and Titthara 2014). In a wider perspective, it is also suggested that the vicious cycle of inequality revolving around Economic Land Concessions will considerably limit the economic development of the country in the future (Rudi et al. 2014).

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

Redistributive land reform: Social Land Concessions programme

Rationales

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

Legal aspects of the property right formalisation

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

Outcomes

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

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

However, these official figures are contested. In a report published in 2013, ADHOC highlights a considerable increase in the total land area granted as SLCs in 2012 (38 SLCs totalling 100,790 hectares) (ADHOC 2013). The NGO suggests that a change was operating in the government's land allocation policies, and its 2013 figures confirm this trend as 485 SLCs were granted relating to a total of 626,823.26 hectares (ADHOC 2014). The report suggests, however, that the vast majority of these SLCs were approved before July's national elections—as a possible ploy to win votes - and that it remained to be seen how many of the

concessions would be used as intended. However, one unnamed informant indicated that figures communicated by ADHOC actually referred to land donated as private ownership under the Order 01 (see under) and not through mechanisms of Social Land Concession.

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 the Ministry of Land Management, Urban Planning and Construction (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).

Table 1 - Outreach of the Social Land Concession programme as of June 2014

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

Sources: MLMUPC (2014)

Forest and fisheries resources co-management

Rationales

At the end of the 1990s, the concession system was at an impasse. The 2002 moratorium (still in application 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. Ironically, the forest concessions reforms agenda was supported and promoted by the same donors who had strongly supported the concessions system in the past. The reforms engaged by the government are comprehensive. They aim to reduce or cancel large parts of forest and fisheries concessions. This institutional reform of the administrations in charge includes a new law on forestry (Royal Government of Cambodia 2002a) and a new law on fisheries (Royal Government of Cambodia 2006b) that 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. Their proximity to the resource base allows for a better control of the resources. The central hypothesis is that if communities contribute to defining access, use and control rules to govern the resources, the management will be more technically efficient and more socially acceptable and just (Li 2002; Ken 2005).

But in Cambodia, the increased attention given to local level natural resource management should be considered as a national programme initiated by the ministries rather than a 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 externalising the costs of the operational management and monitoring.

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

Legal aspects of the property right formalisation

The system of community-based natural resources management does not mean that the state has decentralised all of its right 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 (Figure 4). To enjoy Community Forestry or Community Fisheries rights, a 'community' must be formally constituted with registered members and an elected management committee. Internal rules need to be written in a by-law and resources management plans, with clear benefit-sharing mechanisms, need to be designed and approved by the administration. The community entitlement area needs to be demarcated on a map and on the ground before a management agreement (for 15 years) can be signed by both parties. A careful reading of relevant sub-decrees shows that, under these co-management schemes, the state keeps large prerogatives over the resources: commercial exploitation of timber or commercial fishing activities, tax collections in cases of illegal activities and even the extension of the co-management agreement.

Outcomes

In early 2000, the overall area of forest concessions had been drastically reduced from the initial high of 7,084,215 ha to 2,163,600 ha (Save Cambodia's Wildlife 2006). As an alternative, the Forestry Administration and donors alike started to encourage the establishment of community-

based forest management schemes. Fifteen years later, the contribution of community forests remains modest. The most recent data indicates that there are 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.

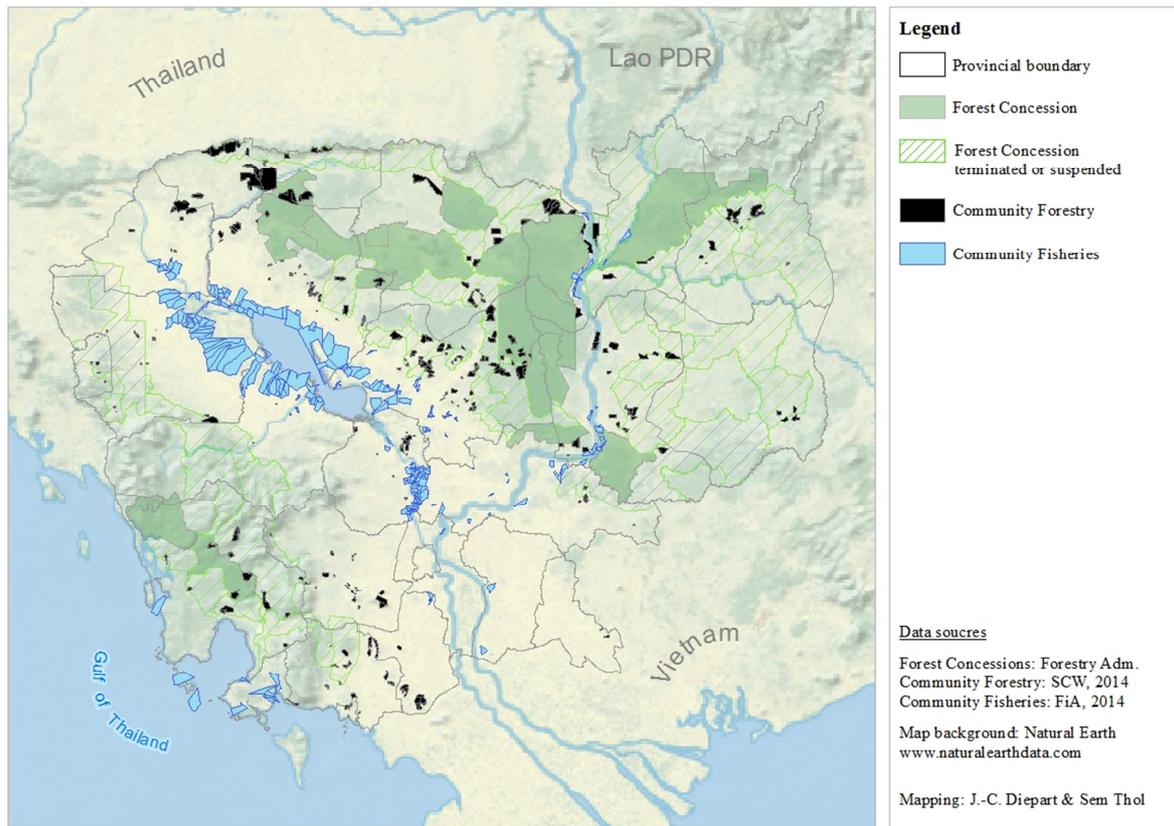
Similarly, the area covered by fishing concessions was reduced by 56 percent in 2001 (Mom 2009). In areas released from fishing lots, the Fisheries Administration and donors have encouraged the establishment of Community Fisheries. In 2012, the remaining fishing lot system was totally abolished. According 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 here¹⁰.

Largely supported by international organisations, 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 legitimised by democratic elections in the villages. But these committees and their actions were rarely articulated to peasant associations anchored in the local territories and histories. These new governance bodies were actually more instrumental in facilitating dialogue between the state and the community but they did not enjoy a strong legitimacy with local groups.

¹⁰ The following section is reproduced (translated) from part of a text originally published in French in 2011, entitled 'The narrow path of a peasant-driven rural development in Cambodia; agriculture, modernisation of land tenure and struggles of actors' (Diepart 2011).



Map 7 - Remaining forest concessions (as of 2012) and forest and fisheries co-management schemes (as of 2014)

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 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 (Figure 4), which is quite at odds with the endogenous logic of land and resource management of the commons. This principle applied to new community territories has actually reinforced and stimulated the over-exploitation of resources in places where this exclusivity principle is not applied. While trying to provide an answer towards the achievement of sustainable development, co-management has also exacerbated the effects of a tragedy of the commons *sensu* Hardin (1968).

But the development of co-management was 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 to a genuine need for, and interest in, improving natural resource management practices.

Protected Area management and zoning

A law on Protected Areas (Royal Government of Cambodia 2008a) provided clearer information on the management of Cambodia's Protected Areas (PA). Among other things it proposed that each PA be structured into four different spatial zones:

- ⇒ Core zone area(s) containing biodiversity, natural resources, ecosystems and genetic resources of high value for scientific research and for sustaining the environment;
- ⇒ Conservation zone area(s) is/are adjacent to the core zone to which access by local communities and people living within and next to the PA to use resources is allowed in accordance with the *prakas* issued by the MoE;

- ⇒ The sustainable use zone is a zone of great economic value for national development and the development and protection of the Protected Area itself. It also promotes the improvement in the livelihoods of local communities and ethnic minorities. The law on Protected Areas foresees the possibility of giving part of the land in the sustainable use zone to communities. An agreement would then be signed between the Ministry of Environment and local communities to give them the rights to manage and exploit the so-called Community Protected Area for a period of 15 years. According to updated statistics from the Ministry of Environment, there are 65 Community Protected Areas in Cambodia covering a total land area of 85,256 ha.
- ⇒ A community zone entails area(s) to be utilised in the socio-economic development of the local communities. It might contain residential land, rice fields and field gardens (*chamkar*), and should protect the rights of ethnic minorities. The release of land titles is possible for these areas but there should be authorisation by the Ministry of Environment in consistency with the Land Law.

Communal land titling

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

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

reckoned to range from 1 to 1.4 percent of the population as a whole (Baird 2013). However, the computation of the demographic census shows that indigenous people represent up to 2.9 percent of the population (Figure 9)¹¹.

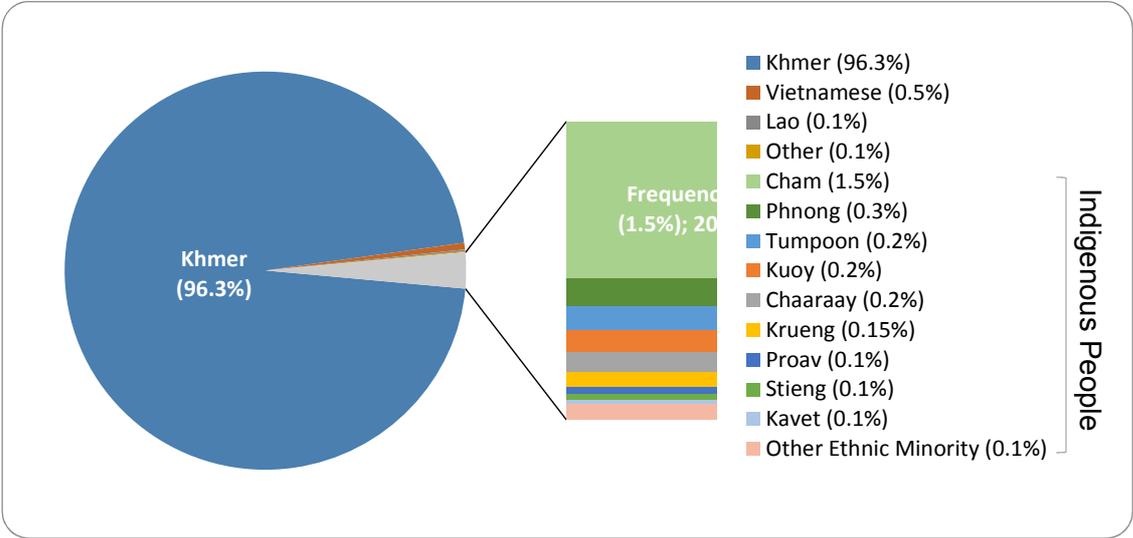


Figure 9 - Distribution of the Cambodian population by mother tongue

Source: Demographic Census, 2008 (National Institute of Statistics 2009b)

Legal framework

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

However, the 2001 Land Law does not provide enough legal and institutional basis to grant collective ownership. Consequently, the 2009 sub-decree was brought into effect to establish the legal foundation for the granting of collective titles to indigenous communities. The

¹¹ During the enumeration of the demographic census the question on ethnicity was not asked. The figure of 2.9 percent comes from the computation of people based on mother tongue.

procedures foreseen by the sub-decree include three steps: first, the designation of the community as 'indigenous' by the Ministry of Rural Development; second, the registration of the village as a legal entity by the Ministry of Interior; and third the actual issuance of the communal land 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: agricultural production land and residential land (transferred from state private land) and lands reserved for this kind of cultivation, burial areas and spirit forests (transferred from state public land) (Royal Government of Cambodia 2009).

Outcomes

A total of 114 communities have engaged in the process of applying for a collective title. Among them, 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 provinces) (Narim and Crothers 2014).

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

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

Ian Baird (2013) argues that the Land Law needs to be subjected to more scrutiny, as the separation of agricultural lands from forestlands has resulted in communal land titling mainly covering agricultural lands, while forestlands have become increasingly reified as state owned. The entanglement between communal land titling and indigenous people has adversely affected non-indigenous communities (e.g. Khmer) practising

swidden agriculture who are denied any right to communal land titles. Another threat affecting communal land titling has been the possibility for indigenous people to obtain private ownership of land through fast upland titling schemes. In a context where swidden agriculture has already been changed into a composite agricultural system with permanent upland cropping, the choice of private land instead of land possessed under a communal land title is, in some cases, a more rational and relevant choice for indigenous people (see below).

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

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 1st September 2011). Müller and Zülsdorf (2013) note that both of these decisions have not yet been implemented.

Circular 02 on the 'regularisation of illegal occupants on state land' was released in 2007 and is a more elaborate document to address the issue. This is an important document because it shows the recognition by the government of the problem that illegal state land acquisition is not only driven by speculators but also by 'real poor families who are truly 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 which 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 operations and implementation was delayed.

Order 01 and new land right formalisation

On 7 May 2012, Prime Minister Hun Sen announced a moratorium on granting Economic Land Concessions. The text, entitled 'Measures to strengthen and enhance the effectiveness of the management of Economic Land Concessions (ELCs)' is a document now commonly known as Order 01. In addition to freezing the granting of ELCs, Order 01 initiated an unprecedented land titling campaign in those areas where the land rights of people and companies overlap onto state land, a process Dwyer (2015) calls the 'formalization fix'.

Rationales

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

The violence of conflicts and confrontations between concessionaires and people reached a climax in 26 April 2012 when Chut Wutty, a prominent environmental activist, was shot dead in Koh Kong while investigating forest crimes and illegal logging (Soenthrith and Seiff 2014). This murder occurred two weeks before a 14-year-old girl was shot dead by heavily armed officials who opened fire on a group of about 1,000 families they

were sent to evict in Kratie province (Titthara 2012). There is little doubt that the decision by the prime minister to announce Order 01 was motivated politically in a move to lessen social unrest one month before the commune elections and one year ahead of the legislative election in July 2013. But the political motivation, as argued by Müller and Zülsdorf (2013), was also internal to the CPP. At the end of 2011, the Minister of MAFF seemingly tried to win a more independent position for the distribution of ELCs and to try to by-pass the legal requirement of cadastral registration of ELC land prior to the awarding of an ELC contract. The authors suggest that Order 01 was a way for the prime minister to strengthen his leadership internally over some dissenting forces in his own government (Müller and Zülsdorf 2013)

Institutional framework

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

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

4. In cases where an ELC had received agreement in principle from the government before the date of this order, the additional legal principles and existing procedures would be implemented (Royal Government of Cambodia 2012).

The 'leopard skin' formula suggests that the plots cultivated by people prior to the granting of the ELCs were excised from the concession through titling; the process results in a concession that resembles spotted leopard skin. Order 01 was presented by the government as a further step in the land reform to resolve and strongly legalise the unclear situation that had arisen in respect of the occupation of state land (Im 2012). The programme was very ambitious, and by September 2012, the Minister of Land Management, Urban Planning and Construction estimated that the total area covered by titles could be 1.8 million ha (approximately 0.7 million parcels) and could benefit up to 470,000 households (Im 2012). The whole titling scheme was scheduled to take place from July 2012 to June 2013. This is a rather narrow time window given the objectives assigned.

Order 01 specifically tries to address land security inside the ELCs through private land titling. However, the instructions (Letter 666 SCN, 26 June 2012) sent six weeks later by the Council of Ministers to the Ministry of Land Management in charge of the titling programme had a quite different content. The text in that Letter suggests that the adjudication areas for the Order 01 titling scheme would need to be much broader and would include other land categories such as forest concessions, Economic Land Concessions, Protected Areas, and forest rehabilitation (Deika) from provincial authorities. This was later further enlarged to include all other types of forest¹².

Instructions to guide the implementation of the titling efforts under Order 01 suggest that land covering less than 5 ha with legal and continued occupancy should be given private ownership titling. Areas larger than 5 ha, and up to 200 ha, that were being cultivated should be given over to private ownership as specified in a subsequent Letter N. 684 SCN dated 02 July 2012. The mechanism to provide private ownership under Order 01 works through donation. This is a legal disposition, outlined in Article 83

¹² In the absence of state land mapping and classification, the extent of forest cover in 2002 is used by the cadastral administration to determine the location of state land, which is simply where there are certain types of forest. 2002 was chosen as the date closest to 2001, which was the date of the relevant Land Law.

of 2001 Land Law, that stipulates that *'the state may only donate immovable property to natural persons and for social reasons in order to allow them to reside or carry out subsistence farming'*. The land that was not yet cultivated should be registered as state private land and the claimant should be given the rights enshrined in a 'small economic concession' contract. This option of granting small economic concessions received a lot of criticism and in practice none of these small economic concession contracts were ever actually designed and granted. (Titthara and Boyle 2012). The original plan of the Order 01 was to provide communal land titles where indigenous people practice swidden agriculture. However, this part of the programme was scrapped weeks later as it was deemed too costly and time-consuming (Woods and Naren 2013).

Given the short time frame of the project, the titling procedure established under the Systematic Land Registration had to be considerably shortened (Annex 4). Through *Sor Cho Nor* (a decision letter), the Council of Ministers formally authorises the State Land Management Committee, chaired by the provincial governor, to i) reclassify all the land as State Private land and ii) directly transfer State Private land through donation to people (legal expert at MLMUPCC, personal communication April 2014). Land is reclassified by sub-decree or royal decree depending on the status of the land, with royal decrees referring to Protected Areas, etc.

Operational aspects of the implementation

Müller and Zülsdorf (2013) provide a detailed description of how the human resources were mobilised and organised to implement titling schemes. The government registration staff totalled 2,000 people (1,000 people from the SLR 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 12 government staff members including representatives from the Ministry of Interior, MAFF, MoE and other ministries and up to 12 young volunteers. The presence of young people in supporting the titling process has received great attention in the media,

and the whole initiative became known as ‘*Samdech Techo youths land titling campaign*’.



Impression of titling field work under Order 01. Credit picture: Lipes, 2012

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

Outreach of the land titling campaign

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

According to this database, 1,010,429 ha were measured under the Order 01 land titling initiative of which 92 percent (927,848 ha) was formally

distributed to 317,444 families with titles. The remaining 8 percent has been kept as reserved land for future use. Within only a year, the outreach of the land titling under Order 01 was dramatic when compared with the 625,000 families reached through the Systematic Land Registration efforts over a 10-year period (2002 and 2012). The most important share (30 percent) of land excised from state land came from un-categorised forest cover, while only 25 percent came from ELCs (Figure 10). Interestingly, the database specifies a few other land categories where titles were issued which were not initially foreseen (Community Forestry and Social Land Concessions). It seems clear from these results that the Order 01 titling scheme had gone far beyond land issues connected to ELCs, Forest Concessions and Protected Areas as initially formulated. It had been a comprehensive attempt to address the problem of insecurity associated with irregular occupation of state land in the Cambodian uplands.

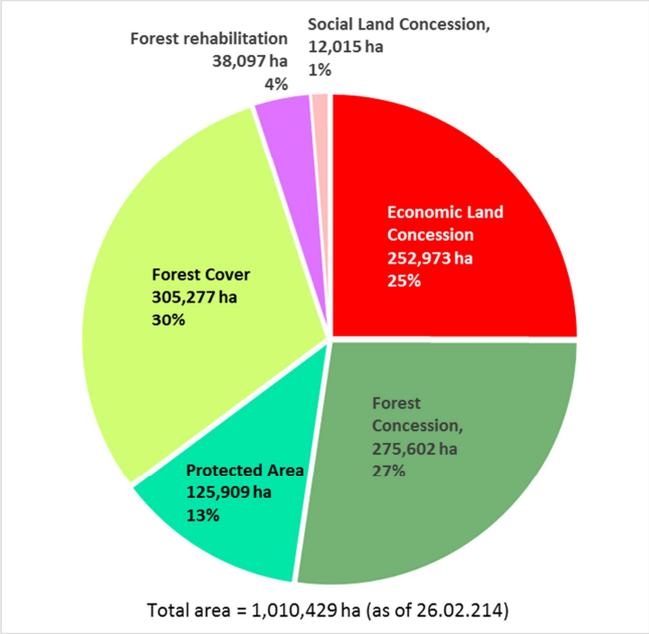


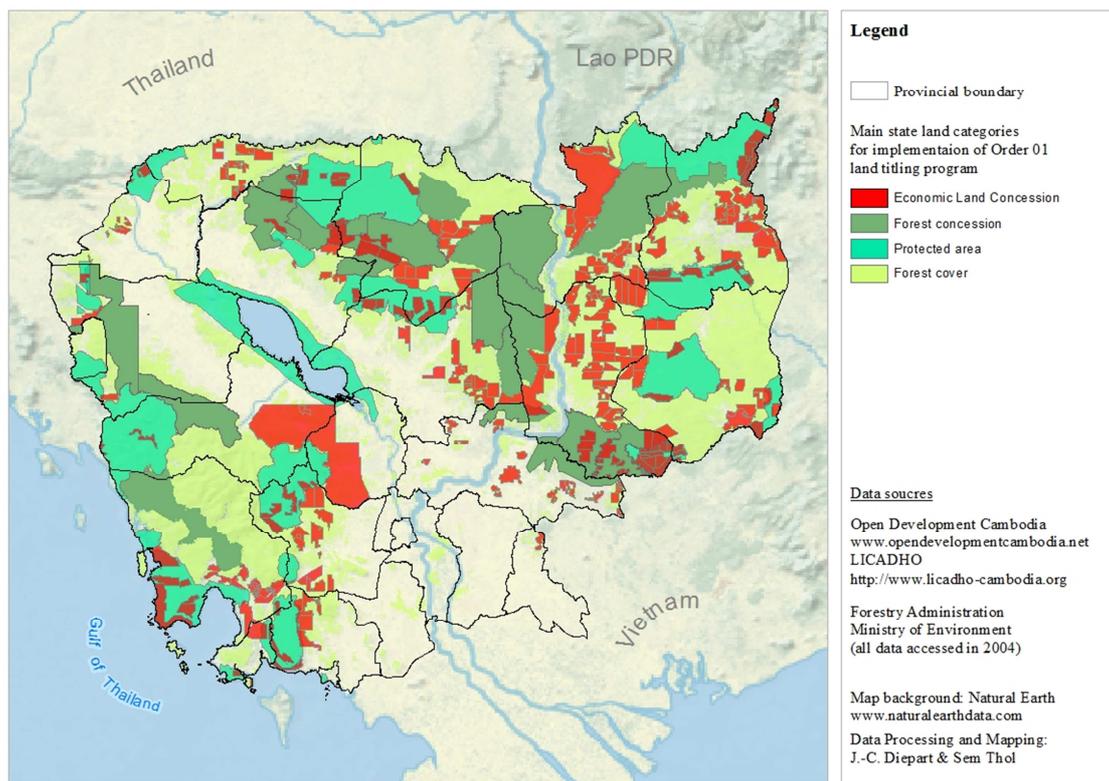
Figure 10 - Distribution of land excised from state land under the Order 01 land titling scheme, by size.

Sources, MLMUPC, 2014 Data processing: Authors

More detailed data computation reveals that, in total, 9.9 percent of ELCs, 3.0 percent of Protected Areas and 8.5 percent of un-categorised Forest

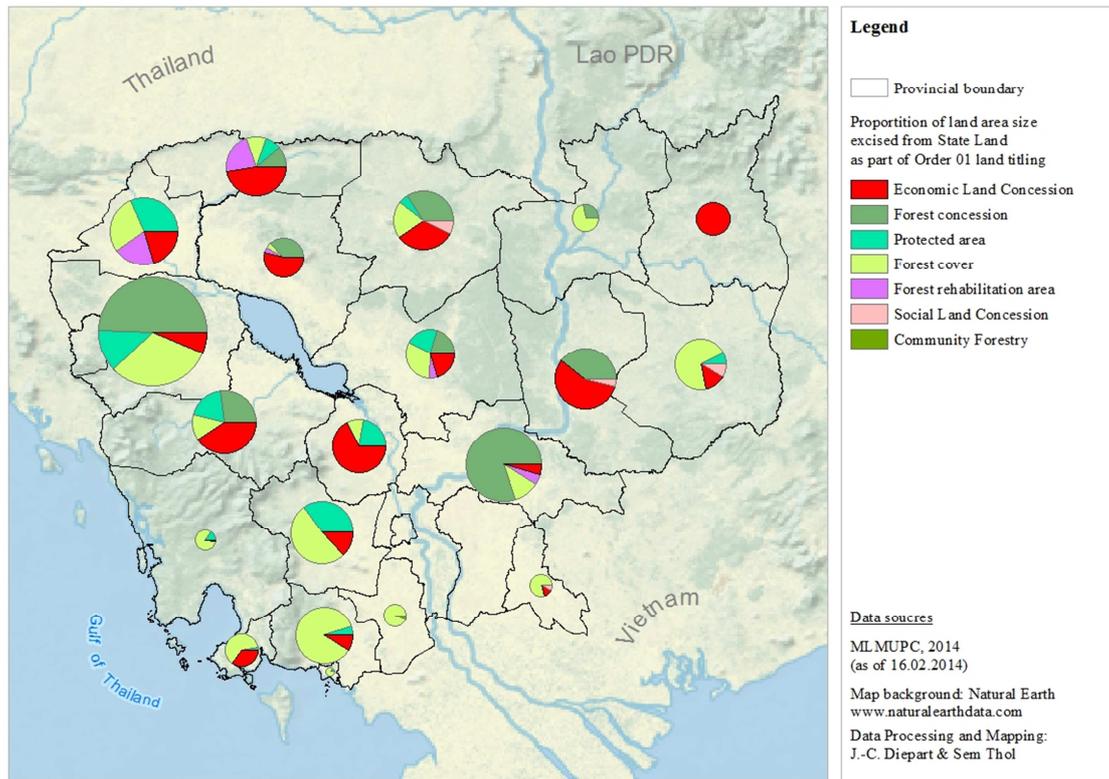
Cover were excised and converted by donation into inalienable private ownership (Annex 6).

A more spatially differentiated view on the outreach of Order 01 titling reveals important differences between provinces (Maps 8 and 9) that can be attributed to several elements. These include the importance of human resource mobilisation in each area, the initial endowment in state land where the titling processes could take place¹³, the magnitude of migration processes and the importance of the migratory population that had appropriated state land, along with the skill and efficiency of the titling team on the ground and also the possible intervention of well-connected concessionaires to limit the scope of titling efforts within their areas. These irregularities and the overall lack of transparency of the whole campaign were widely documented in the press during the titling process (Boyle and Titthara 2012a; Dene-Hern 2013).



Map 8 - Distribution of state land categories where the Order 01 land titling campaign took place

¹³ Basic correlation shows that there is a positive correlation between ELCs and area titles in ELCs ($r^2=0.57$) and in unclassified Forest Cover ($r^2=0.41$). But that this is not the case for Protected Areas ($r^2=0.087$).



Map 9 - Proportion of land excised from state land under Order 01 land titling

Outcomes

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

State formation

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

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

Land [in] security

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

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

A fundamental question underlying the land titling process is 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 implies looking at the tenure security of land located inside and outside the adjudication area. As a matter of fact, titling of private land is instrumental to the delineation of the land that is not privatised and which then becomes a *de facto* fixed state asset. By implication, land security provided on land in the adjudication might reduce land tenure security in areas outside the adjudication area which were subjected to local recognition and pluralism in tenure (Hirsch 2011). This issue of security can be spatially differentiated according to areas where the concession activities are in full swing or where the concession is not [yet] active.

The 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 legitimate the concessionaires or Protected Area authorities to force/evict those people from the delineated land.

Socio-economic and spatial development

A central set of questions might emerge from an examination of the systemic interaction between land security [or lack of security] created in the uplands as a result of this new formalisation of land rights and the

current socio-economic differentiation process, for instance through activating and consolidating a land market.

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

Spatial planning

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

8. CONCLUSION: FRAGMENTED LAND TENURE REGIMES

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

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

This 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 marginalised the peasant population who are expanding their land-holdings.

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

The recent attempts by the government to address this systemic land insecurity in the uplands have shown that political will can lead to

concrete results. However, the incompleteness of the land titling process has left large areas untitled and has created new forms of land tenure fragmentation in the uplands, which are not being addressed.

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

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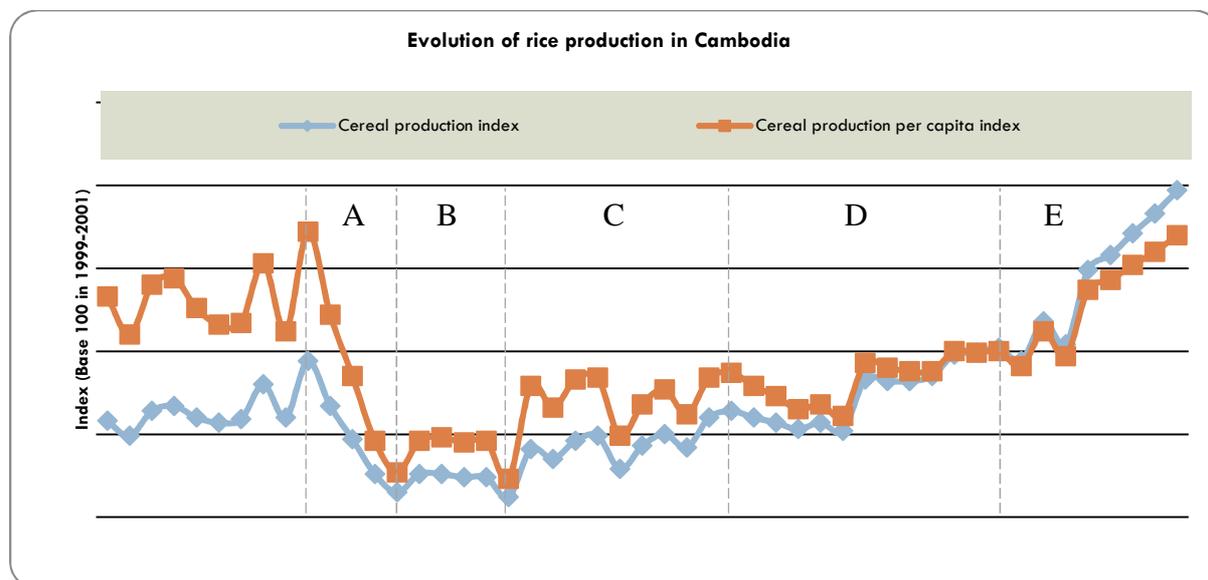
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10. ANNEXES

Annex 1. Evolution of rice production in Cambodia



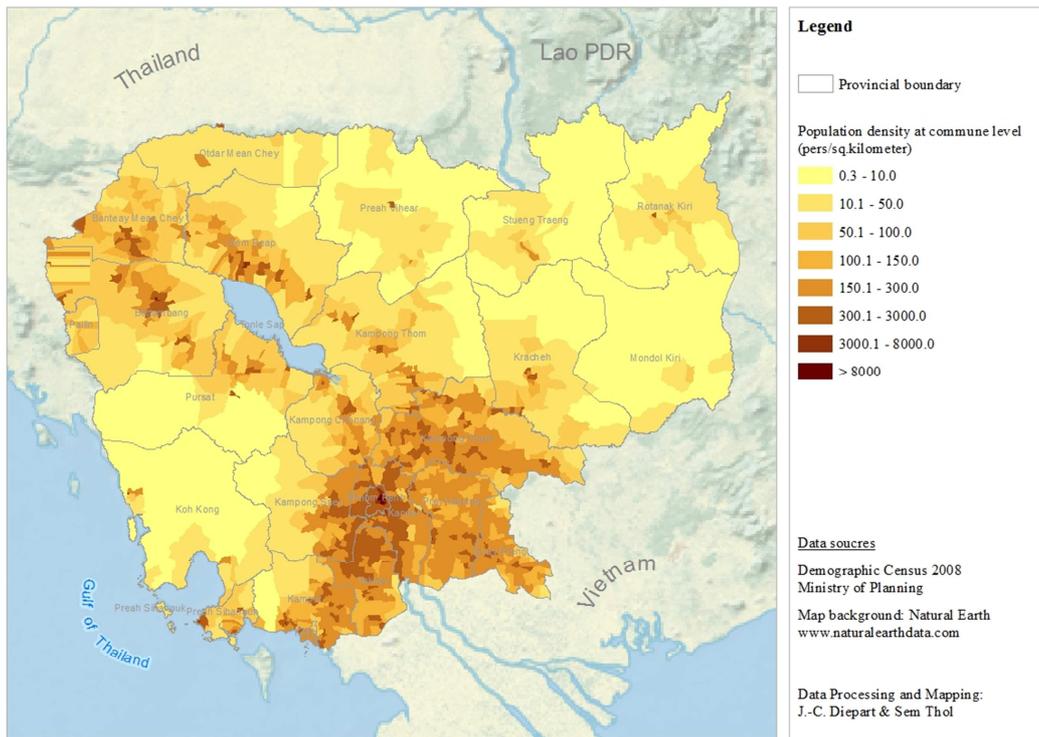
Source: FAO STAT, <http://www.fao.org/corp/statistics/en/>
[accessed in January 2010]

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

Annex 2. Demographic indicators 1998-2008

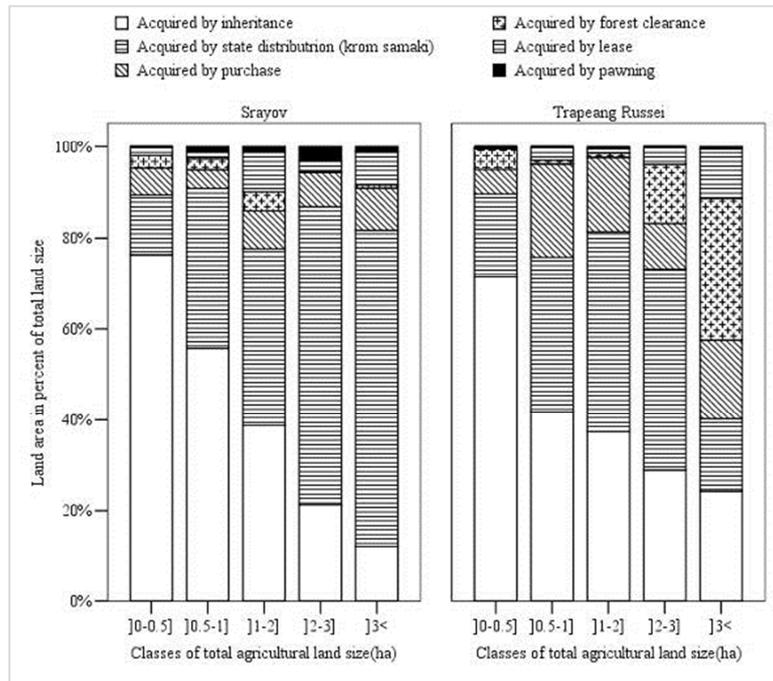
		Population (people count)						Population Density (people/km ²)		Annual Growth Rate (1998-2008) (%/year)
		1998			2008			1998	2008	
		Total	Rural	Urban	Total	Rural	Urban			
Cambodia		11,437,656	81.7%	18.3%	13,395,682	80.5%	19.5%	64	75	1.54
Plain Region	Kampong Cham	1,608,914	92.7%	7.3%	1,679,992	93.0%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

Source: Demographic census report (NIS, 2009)

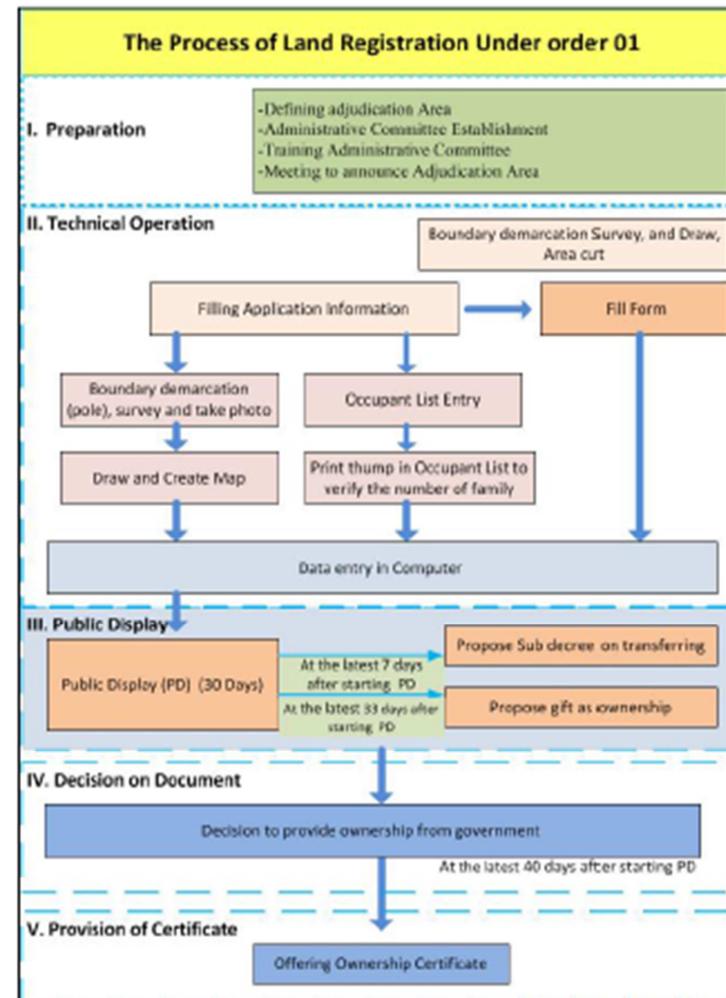
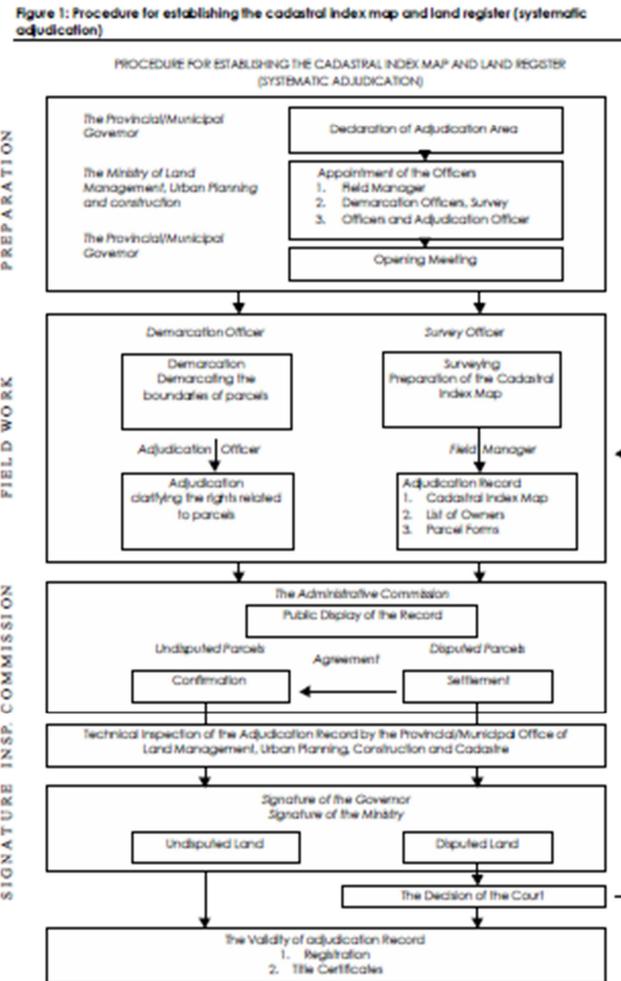


Population density per commune as of 2008

Annex 3. Agricultural landholding size and structure in two communes of Kampong Thom (as of 2005)



Annex 4. Processes of land registration under cadastral index map (left) and Order 021 (right)



Annex 5. Economic Land Concession area size allocated per country and purpose

	Rubber	Tree plantation	Agro-industry (unspecified)	Oil palm	Sugar cane	Mixed	Annual crop	Tourism	Unknown	Total
Cambodia	263,738	530,639	68,472	40,812	22,797	48,182	18,001	18,308	204,213	1,215,162
Vietnam	377,081	20,534	9,949	0	11,956	11,925	0	0	0	431,445
China	188,113	94,628	17,931	19,701	0	10,894	0	1,000	51,732	383,999
Malaysia	56,863	0	0	12,901	0	0	0	9,506	57,117	136,387
Singapore	17,408	0	9,379	0	0	0	10,492	0	57,577	94,856
Thailand	7,754	0	15,093	0	27,507	0	8,767	0	8,994	68,115
Korea	17,465	34,132	0	0	0	0	9,445	0	7,076	68,118
US	10,730	13,702	0	0	0	0	0	0	0	24,432
India	0	0	11,665	0	10,292	0	0	0	0	21,957
France	10,447	0	0	0	0	0	0	0	0	10,447
Israel	0	2,931	0	0	0	0	0	0	5,528	8,459
Unknown	0	0	0	0	0	0	0	592	83,749	84,341
Total	949,599	696,566	132,489	73,414	72,552	71,001	46,705	29,406	475,986	2,547,718
	Rubber	Tree plantation	Agro-industry (unspecified)	Oil palm	Sugar cane	Mixed	Annual crop	Tourism	Unknown	Total
Cambodia	10%	21%	3%	2%	1%	2%	1%	1%	8%	48%
Vietnam	15%	1%	0%	0%	0%	0%	0%	0%	0%	17%
China	7%	4%	1%	1%	0%	0%	0%	0%	2%	15%
Malaysia	2%	0%	0%	1%	0%	0%	0%	0%	2%	5%
Singapore	1%	0%	0%	0%	0%	0%	0%	0%	2%	4%
Thailand	0%	0%	1%	0%	1%	0%	0%	0%	0%	3%
Korea	1%	1%	0%	0%	0%	0%	0%	0%	0%	3%
US	0%	1%	0%	0%	0%	0%	0%	0%	0%	1%
India	0%	0%	0%	0%	0%	0%	0%	0%	0%	1%
France	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Israel	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Unknown	0%	0%	0%	0%	0%	0%	0%	0%	3%	3%
Total	37%	27%	5%	3%	3%	3%	2%	1%	19%	100%

Sources: ODC + LICADHO: Data consolidation and processing: authors

Annex 6. Size distribution of land excised from State Land under Order 01 land titling scheme

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

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



Le GRAESE (Groupe de Recherches sur l'Asie de l'Est et du Sud-Est) regroupe des chercheurs concernés par les problèmes du développement en Asie Orientale et Sud-Orientale. A son origine se trouvent des académiques et des chercheurs ayant participé à des projets de recherche, d'enseignement et de coopération dans cette région du monde depuis le milieu des années 1990. En Belgique, ces activités ont associé, dès le début, des chercheurs de l'UCL, des FUSAGx, et de l'ULg qui poursuivent une coopération régulière depuis une quinzaine d'années. En Asie, ces activités ont concerné un grand nombre de chercheurs et d'académiques de diverses universités et institutions vietnamiennes, laotiennes, cambodgiennes, thaïlandaises et chinoises. L'Université Agronomique de Hanoi (UAH) est un partenaire privilégié depuis le début. Ces activités ont concerné particulièrement les projets de développement agricole, les composantes socio-économiques du développement rural, les rapports villes-campagnes et les politiques affectant ces différents domaines. En outre plusieurs thèses de doctorat ont été réalisées dans le cadre de ces activités, et sous diverses formes de partenariat entre les universités belges et asiatiques concernées. Le **GRAESE** vise à donner une meilleure visibilité à ces diverses activités, à faciliter la circulation de l'information entre les chercheurs et centres de recherches concernés, et à appuyer et soutenir l'intérêt en Belgique et en Europe pour les problèmes du développement asiatique dans un public plus large.

En pratique le **GRAESE** a pour objectif :

- 1) de stimuler la recherche interdisciplinaire concernant les problèmes et les enjeux du développement en Asie orientale et sud orientale ;
- 2) de publier sous forme de Working Papers (format papier ou online) des résultats de recherche liés aux projets en cours et aux questions concernant les diverses thématiques du développement appliquées à l'Asie Orientale et Sud-Orientale, avec une attention particulière aux thèmes évoqués ci-dessus ;
- 3) de réaliser des publications scientifiques de divers types concernant ces problèmes et réalisées par des chercheurs des différents centres partenaires en Europe et en Asie ;
- 4) de fournir un lieu de rencontres entre chercheurs concernés par ces thèmes, particulièrement dans le cadre des doctorats en cours ;
- 5) d'organiser des activités d'enseignement et d'information sur les problèmes du développement de l'Asie de l'Est et du Sud-Est, notamment à travers l'organisation de conférences et séminaires donnés par des académiques et chercheurs asiatiques de passage en Belgique.

En Belgique, les activités du **GRAESE** sont coordonnées par Ph. Lebailly (UEDR-Gembloux-ULg) et J.Ph. Peemans (CED-UCL). Le secrétariat du **GRAESE** est assuré par l'UEDR.

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