

Article

Christoph Oldenburg and Andreas Neef*

Reversing Land Grabs or Aggravating Tenure Insecurity? Competing Perspectives on Economic Land Concessions and Land Titling in Cambodia

Abstract: This paper discusses Cambodia's legal framework relating to Economic Land Concessions (ELCs) and looks at the implementation gaps. It argues that despite Cambodia's legal framework governing land and ELCs being well-developed, its social benefits, such as protecting the rights of the poor and vulnerable and contributing to transparency and accountability, are almost non-existent. Recent evidence suggests that the Government's handling of natural resources is a far cry from its official land policy which is "to administer, manage, use and distribute land in an equitable, transparent, efficient, and sustainable manner". This paper argues that this is due to (1) a large gap between the country's legal framework and the implementation of the country's land concession policies and (2) a complete disregard of the country's customary land rights. Widespread corruption and nepotism encourages growing inequality in land ownership and a significant power imbalance between small groups of powerful, politically and economically well-connected elites and poor and vulnerable people in Cambodia. This is exacerbated by the lack of implementation of appropriate regulations. This elite exercises control over the judiciary and has created a climate of impunity, thus hindering the overall implementation of the legal framework and serving their own interests. The paper further looks into recent Government actions such as the moratorium on ELCs and a new land titling initiative to re-allocate ELC area and forestland to the rural poor and

***Corresponding author: Andreas Neef**, Development Studies, School of Social Sciences, Faculty of Arts, University of Auckland, Auckland 1142, New Zealand, E-mail: a.neef@auckland.ac.nz
Christoph Oldenburg, NGO Forum, Phnom Penh, Cambodia,
E-mail: christopholdenburg@yahoo.de

assesses whether these actions have the potential to reverse or perpetuate the current inequality in land holdings.

Keywords: land grabbing, legal framework, land concessions, land titling, Cambodia

DOI 10.1515/ldr-2014-0014

1 Introduction

Land is the most valuable resource for the citizens of Cambodia. Approximately 22.7% of the land is arable¹ and about 80% of the population lives in rural areas, mostly depending on agriculture as the main source of their livelihood. Agriculture employs 60% of the total labor force and contributes to 33% of the Gross National Product. Land is the necessary foundation to ensure the livelihood for its population, which holds especially true for forest dependent communities and indigenous communities. The Royal Government of Cambodia's (RGC's) underlying official land policy is "to administer, manage, use and distribute land in an equitable, transparent, efficient, and sustainable manner in order to contribute to ensuring food security, natural resources and environmental protection, national defense and socio-economic development in the context of market economy".²

During the Khmer Rouge Period from 1975 to 1979, private land ownership was abolished, and all cadastral documents were destroyed.³ Systematic land registration has only been taken up again in the twenty-first century with major assistance from international donors. The new Land Law of 2001 introduced new property rights categories, such as state public land (mostly forested areas) and state private land (land that can be converted into various forms of concessions). Yet, to date, no clear demarcation between state public and state private land exists. Most state private land has been allocated to domestic and foreign investors in the form of Economic Land Concessions (ELCs).

¹ <<http://geography.about.com/library/cia/blccambodia.htm>>, data refers to 2005.

² RGC, "Declaration of the Royal Government on Land Policy", No. 27, 1 July 2009.

³ E.g. Christoph Sperfeldt, Farrah Tek and Billy Chia-Lung Tai, *An Examination of Policies Promoting Large Scale Investments in Farmland in Cambodia*, Submitted to the Cambodian Human Rights Action Committee (CHRAC), November 2012.

While poverty has been reduced by 17% from 47% in 1997 to 30% in 2007, it is estimated that 92% of the Cambodian poor live in rural and therefore agricultural areas.⁴ From 2007 to 2010, an *increase* in poverty was likely between 1 and 4% due to economic downturn in 2009,⁵ which illustrates that reducing rural poverty is still a challenge for Cambodia. New data indicate that in 2010 21.1% of the population lived in poverty and this further declined to 19.8% in 2011. The same report distinguished between rural and urban poverty and puts the rate in rural areas at 24.9%.⁶ While exact data on landlessness and land poverty are not available, the United Nations Capital Development Fund (UNCDF) estimates that 25% of rural poor are landless with an increase of 2% per annum.⁷ In addition, 40% of the rural poor are estimated to be land-poor as they do not possess more than 0.5 ha per household, which does not allow them to grow sufficient food to meet their nutritional needs.⁸

In its aim to reduce rural poverty and to meet the Cambodian Millennium Development Goals by 2015, the RGC views the enhancement of the productivity and development of the agricultural sector as most important. One mechanism that the RGC has deployed in an attempt to achieve this is the granting of ELCs.⁹ Art. 3, Para 3 of the Sub-Decree on ELCs further specifies the objectives to grant ELCs “To increase employment in rural areas within a framework of intensification and diversification of livelihood opportunities and within a framework of natural resource management based on appropriate ecological system”.

Prospects and approaches for future national development are described in the National Strategic Development Plan. The plan for 2014–2018 is currently being drafted and according to the concept note of approaching the National Strategic Development Plan 2014–2018, agriculture and land still plays a major role. Point 2.29 speaks about Land and capital: *Despite sensitive issues around*

4 World Bank, *Poverty Profile and Trend in Cambodia: Findings from the 2007 Cambodia Socio Economic Survey (CSES) East Asia and Pacific Region*, 2009.

5 *Ibid*; Tong Kimsung, CDRI, *Analysing Chronic Poverty in Rural Cambodia: Evidence from Panel Data*, Working Paper Series No 66 (February 2012), p. 1.

6 Royal Government of Cambodia, Ministry of Planning *Poverty in Cambodia – A New Approach, Redefining the Poverty Line*, Phnom Penh, April 2013, p. 12. It needs to be noted that this data was drawn from a newly defined poverty line.

7 UNCDF, *Local Development Outlook Cambodia* (2010), p. 176.

8 GTZ, *Foreign Direct Investment (FDI) in Land in Cambodia*, Gesellschaft für Technische Zusammenarbeit (GTZ) [2009].

9 Royal Government of Cambodia, *National Strategic Development Plan Update 2009–2013* (2010), p. 121.

land, there is still a lot of possibility to convert land into capital for high value addition. Growth in landlessness among farmers is not increasing and also people in the coming generations want jobs and livelihoods outside agriculture. The option to use land more optimally, therefore, is high now. Agriculture “must become one of the important engines of growth in the future”.¹⁰

This paper discusses experiences made surrounding ELCs in Cambodia and a recent government initiative to re-allocate some of the ELC area to the rural poor. ELCs are per definition “a mechanism to grant private state land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation”.¹¹ It is therefore a right to occupy private state land for agricultural and industrial-agricultural exploitation, serving economic purposes.¹² Art. 2 further defines: “Industrial-agricultural exploitation as referring to:

- cultivation of food crops or industrial crops including tree planting to be tree plantation,
- raising of animals and aquaculture,
- construction such as a plant or factory and facilities for the processing of domestic agricultural raw materials, or
- a combination of some or all of the above activities”.

Other concessions which exist under the Cambodian law are Use, Development or Exploitation Concessions such as mining concessions, port concessions, airport concessions, industrial development concessions, or fishing concessions.¹³ These concessions are different from ELCs and do not fall within the scope of this paper.

2 Land concessions in Cambodia in a historical perspective

While land concessions came under scrutiny only in the last couple of years, the system of granting concessions was introduced under the French colonial

¹⁰ *An Approach Paper for the National Strategic Development Plan 2014–2018*, RGC (2013b), Draft.

¹¹ Art. 2 Sub-Decree on ELCs, Royal Government of Cambodia, No. 146 ANK/BK, 27 December 2005.

¹² Art. 3 Sub-Decree on ELCs, Royal Government of Cambodia, No. 146 ANK/BK, 27 December 2005.

¹³ Art. 50 Land Law.

system. The first land concessions in French Indochina were initiated by decree in 1874 that enabled colonial authorities to grant “unoccupied” land to concessionaires under condition that it be under complete cultivation within three years (Slocomb 2007). In 1899, the Governor-General of Indochina issued a legislative order that regulated the allocation of rural land concessions to French nationals (Doumer 1899). As Slocomb (2007: 18f) states “[t]he land concession system was arguably the most blatant expression of colonial power in French Indochina, a blunt instrument wielded for the single-minded ambition of capital.” By that time, concessions were mainly small size.

The system of land concessions was continued after independence. Under the Khmer Rouge regime, granting of land concessions ceased and private land ownership was abolished. Only after the introduction of the Land Law of 1992 the system of granting land concessions was reintroduced. The objectives of these concessions were similar to those postulated later, namely to create state revenue and reduce poverty. The law also provided for the possibility to grant forest concessions. From 1993 to 2002 more than 30 forestry concession zones were created, covering about 6.5 million ha and ~70% of the forest cover¹⁴ (McKenney et al. 2004; see Figure 1). The system caused widespread forest degradation was criticized by international donors and development banks and was finally abolished in 2002. With the enactment of the Land Law 2001, and the Sub-Decree on ELCs a more formalized framework governing land concessions was installed.¹⁵

3 Legal framework for economic land concessions

The Land Law of 2001 and the Sub-Decree on ELCs issued in 2005 both govern the granting of land concessions. While the 2001 Land Law sets forth general provisions relevant for all land concessions, including those for social and economic purposes (Art. 48-62), the Sub-Decree on ELCs lays out the legal requirements for granting an ELC. Art. 4 stipulates

¹⁴ McKenney, Bruce, Yim Chea, Prom Tola, and Tom Evans, *Focusing on Cambodia's High Value Forests: Livelihoods and Management*, Cambodia Development Resource Institute and Wildlife Conservation Society, Phnom Penh, 2004.

¹⁵ For more information on the historical background, see Sperfeldt et al. (2012), *supra* note 3, pp. 20–21.

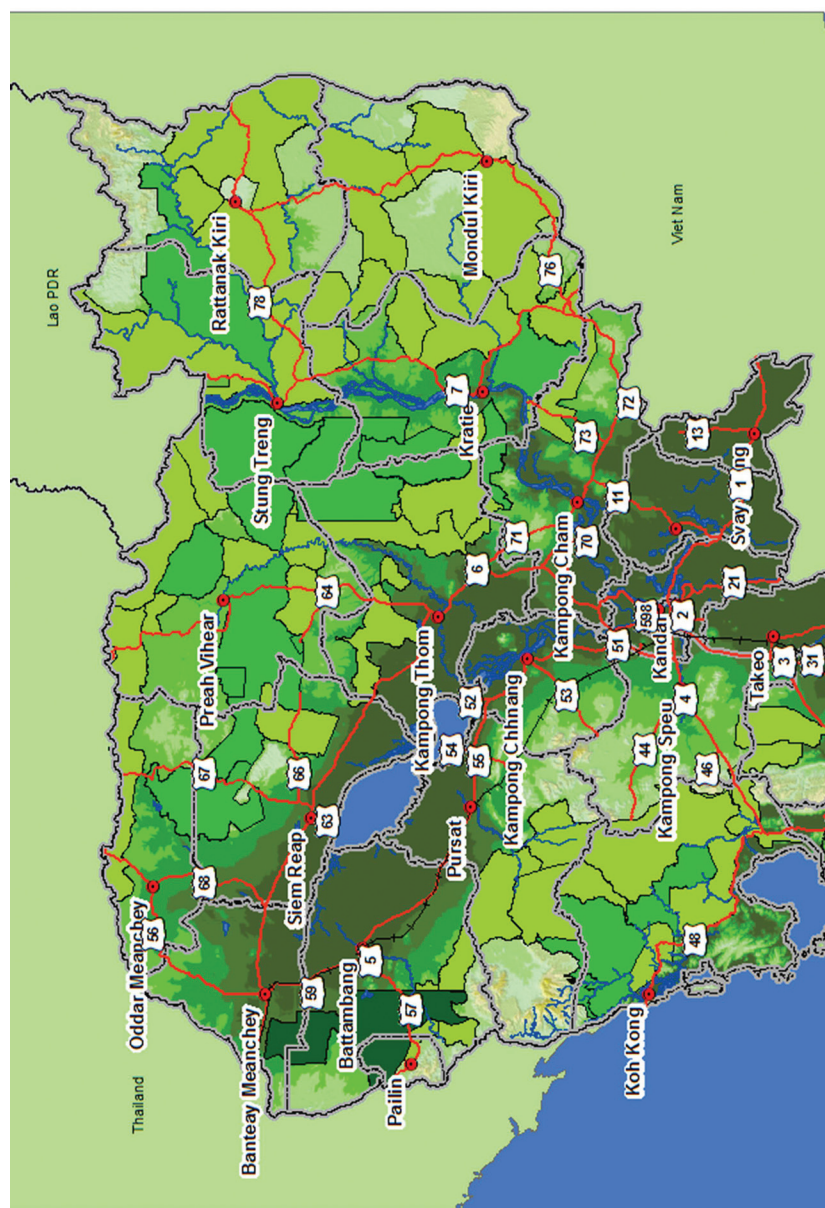


Figure 1: Forest concessions in Cambodia in 2001
Source: DANIDA and SCW 2007.

that “An ELC may be granted only on a land that meets all of the following five criteria:

- 1 The land that has been registered and classified as state private land in accordance with the sub-decree on State Land Management and the sub-decree on Procedures for establishing Cadastral Maps and Land Register or sub-decree on Sporadic Registration.
- 2 A Land Use Plan for the land has been adopted by the Provincial-Municipal State Land Management Committee and the Land Use is consistent with the plan.
- 3 Environmental and Social Impact Assessments have been completed with respect to the Land Use and Development Plan for ELC Projects.
- 4 Land that has solutions for resettlement issues, in accordance with the existing legal framework and Procedure. The contracting authority shall ensure that there will not be involuntary resettlement of lawful land holders and that access to private land shall be respected.
- 5 Land for which there have been public consultations, with regard to ELC projects or proposals, with territorial authorities and residents of the locality.”

The maximum size of an ELC is 10,000 ha,¹⁶ and the maximum duration of an ELC is 99 years.¹⁷ Details need to be established by a concession contract between the concessionaire and the contracting authority.¹⁸ A land concession is conditional as it must comply with the provisions of the 2001 Land Law and the concession contract.¹⁹ It is revocable through governmental decision or can be canceled by the courts when its legal requirements are not complied with.²⁰ An ELC can be acquired by foreign entities or Cambodian entities which are 100% foreign owned. The prioritized method for granting ELCs is through competitive solicited proposals by the Contracting Authority.²¹ However, potential concessionaires can propose an ELC project to the relevant authorities,²² which is another permissible way to initiate such project.

Art. 58 of the 2001 Land Law further states that “[t]he land concession may not violate roadways or transportation ways or sidewalks or their borders and

¹⁶ Art. 59 Land Law.

¹⁷ Art. 61 Land Law.

¹⁸ Art. 53 f Land Law, Art. 23 *et seq.* Sub-decree on ELCs.

¹⁹ Art. 54 Land Law.

²⁰ Art. 55 Land Law.

²¹ Art. 18 sub-decree on ELCs.

²² Art. 8 sub-decree on ELCs.

the ground necessary for their maintenance, nor to waterways, pools, ponds and water reserves to be used by the people in their daily lives”.

According to the available concession contracts, it seems that the Contracting Authority protects the interests of the local people by not allowing the company to get hold of the lands that are lawfully possessed by the people and lands that are under family agricultural production, and encouraging joint land development between the people and the company if mutually agreed.²³

For instance, the concession contract lays out that “...lands that are being used for family agricultural production must be deducted from the granted ELC”.

The authority to grant an ELC lies with the Ministry of Agriculture, Fisheries and Forestry (MAFF).²⁴ Previously it was possible for sub-national authorities²⁵ to grant smaller ELCs up to 1,000 ha,²⁶ but this option was terminated in 2008.²⁷ It is interesting, though, that MAFF is not the only body granting ELCs despite the fact the sub-decree on ELCs only mandates MAFF. In fact, ELCs can be granted by any public entity that owns land.²⁸ In recent years, ELCs have been increasingly granted by the Ministry of Environment (MOE), which is responsible for the administration of Cambodia’s protected areas.²⁹ ELCs granted by MOE lie *within* protected areas, designated by MOE as sustainable use zones. In practice, the Office of the Council of Ministers, the RGCs top executive organ, administered by the Cambodian head of government, approves the granting of ELCs.³⁰

23 See also the report “Economic Land Concessions and Local Communities” by Ngo Sothath and Chan Sophal, *Cambodian Economic Association, in Cooperation with NGO Forum on Cambodia, Phnom Penh* (December 2010), p. 40.

24 Art. 29 sub-decree on ELCs, Royal Government of Cambodia, No. 146 ANK/BK, 27 December 2005.

25 Provincial and municipal governors.

26 Art. 29 II sub-decree on ELCs, Royal Government of Cambodia, No. 146 ANK/BK, 27 December 2005.

27 Art. 1, sub-decree on Modification of the sub-decree on ELCs 2008.

28 Art. 53, 58 Land Law 2001; “Land Law of Cambodia, A Basic Law Guide for Students and Practitioners”, Final draft, 23 October 2003, prepared by the East–West Management Institute, Inc, p. 126; Art. 58.

29 Protected Area Law, 2008.

30 “Economic Land Concessions and Local Communities” by Sothath and Sophal (2010), *supra* note, p. 4.

ELCs can only be granted on *state private land*,³¹ whereas *state public land* cannot be subject to sale or transfer and cannot be the subject of an economic concession.³² Compared to state private land, state public land is characterized by its use in the public interest and Art. 15 of the 2001 Land Law lists all property falling into this category, such as forests, courses of water, lakes, harbors, railways, roads, and others. It needs to be noted that it is legally possible to change the property's classification, if the property has lost its public interest.³³ State public land can be reclassified as state private land by a sub-decree, which needs to be signed by the head of the RGC. It further needs to be registered with the Cadastral Administration to be effective.³⁴ The relevant sub-decree is then published in the Royal Gazette which is the official national promulgating organ in Cambodia.

Rental fees for concessionaires are low and lie between 0 and 10 USD/ha, depending on the land quality. In comparison, rental fees among locals range from 100 to 250 USD/ha.³⁵ Loehr³⁶ argues that due to the “*ridiculously low*” fees,³⁷ such concessions are “even more advantageous for investors than full property titles, because the holder does not have to pay a purchase price.”

4 Implementation in practice

As seen above, the law provides various social and environmental safeguards. Yet, in practice, the legal requirements for granting ELCs have often not been complied with by both state authorities and concessionaires. For instance, ELCs have been granted on state public land and the reclassification to state private land occurred only after the granting process. In several cases, the maximum size of ELCs has been bypassed by granting land which neighbors each plot to

31 Art. 2, 4 sub-decree on ELCs, Royal Government of Cambodia, No. 146 ANK/BK, 27 December 2005.

32 Art. 15,16, Land Law 2001.

33 Art. 16 Land Law 2001.

34 East-West Management Institute, Inc. (2003), *supra* note 27.

35 Information was provided by land owners and confirmed by people working in the land sector.

36 Loehr, Dirk, Land Reforms and the Tragedy of the Anticommons – A Case Study from Cambodia, 2012.

37 RGC. The Fixation of Concession Land Rental Fee, Office of the Council of Ministers No. 803, 31 May 2000; RGC (MAFF): Economic Land Concession, Information Center, 2000; Üllenberg (2009), *supra* note 8.

concessionaires which are de facto controlled by one person or company.³⁸ ELCs have not been consistent with the land use plan, if such plan exists. In other cases, environmental and social impact assessments have not been conducted or were of low quality.³⁹ Many studies confirm that legally required consultations with affected villagers were not conducted.⁴⁰ Besides the clause in the concession contract that lands being used from agricultural production must be deducted from the granted ELC, no solutions were provided for local villagers.⁴¹ In fact, thousands of local villagers have been evicted to make way for concessions.⁴² ELCs were granted by national authorities and in many instances, provincial and local authorities were not aware that a concession has been granted in their administrative area. ELCs have been granted in protected forest areas – core and conservations zones as defined by the law – after the reclassification to sustainable use zones according to the law on Protected Areas 2008, which allows economic activities in these areas according to its Art. 11 III. As a consequence, logging took place in core forest areas, contributing to the destruction of ecosystems within. It has been stated that some concessionaires have no real interest to use the land for agro-industrial purposes, as they only seek to log the valuable timber.⁴³

The authors are not aware of a single ELC which has been granted according to the by-law favoring solicited proposals. Unsolicited proposals initiated by investors are the norm. This means that it is the investors that are seeking land areas suitable for the production of crops or for timber exploitation rather than authorities identifying suitable land for investment. This practice inhibits a

38 Surja P. Subedi, *A Human Rights Analysis of Economic and Other Land Concessions in Cambodia* (2012), Report of the Special Rapporteur on the situation of human rights in Cambodia, A/HRC/21/63/Add.1, Rev. A Para 97, 98, p. 40.

39 Andreas Neef, Siphath Touch and Jamaree Chienthong, *The Politics and Ethics of Land Concessions in Rural Cambodia*, Journal of Agricultural and Environmental Ethics [2013].

40 E.g. MH Ethanol, see Ji-Sook Lee, “Moving Beyond Misconceptions”, MH-Ethanol – Case study of a Korean agro-industrial investment in Cambodia (2012), p. 29; Kachoak Village, Kok Commune, Barkaev District, Ratanakiri; Rithy Theavy Visna company and Heng Brothers Company in Malik Village, Malik Commune, Andoung Meas District, Ratanakiri; Sovann Reachsey Co. Ltd. And Mong Rethy in Chhnaeng Village, Srae Khtum Commune, Kaev Seima District, Mondulkiri, see Mark Kavenagh, Dom Renfrey and Erin Flynn, “Free, Prior and Informed Consent in the Development Process in Indigenous People Communities of Mondulkiri and Ratanakiri Province”, NGO Forum on Cambodia (2012), pp. 18–27.

41 *Ibid.*

42 For cases in Koh Kong, Kampong Speu and Oddar Meanchey see Pred, David, “*Bittersweet. A Briefing Paper on Industrial Sugar Production, Trade and Human Rights in Cambodia*” Bridges Across Borders Cambodia (2010), pp. 4, 7.

43 Representative of the Mong Rethy Group, April 2013.

comprehensive land use planning by the sub-level authorities (provincial and local). In principle, the Cambodian Constitution protects the independence and impartiality of the country's courts and postulates a regime of rule of law.⁴⁴ The execution and protection of the law rests with the State's executive and judiciary branches according to the principles of separation of powers. Yet local communities face challenges when exercising their rights in court proceedings. There is a structural imbalance between local farmers, who often even lack money to access the court system as they cannot pay the necessary fees, while investors are often backed by multinational companies. Among the 157 land dispute cases involving agricultural land recorded by the NGO Forum, only 46 cases or 29.2% were partly or fully resolved,⁴⁵ compared to 42.2% partly or fully resolved disputes over residential land.⁴⁶ This indicates that courts are less likely to process complaints or lawsuits involving concessionaires. On contrast, local villagers are subject to court proceedings if they exercise their rights on land claimed by concessionaires. Consequently, villagers tend not to access the formal legal system rather than seeking extrajudicial recourse.⁴⁷ The major threat for the independence of the jurisdiction stems from the predominantly exercised control by the executive and its associated investors and rich and powerful businessmen over the courts. The legal system of Cambodia has long been criticized of being partial and corrupt, and there is little evidence that this might change.⁴⁸ In fact, the US Country Report on Human Rights Practices in 2012 confirms "A weak judiciary that sometimes failed to provide due process or a fair trial procedure [...]. The courts [...] were subject to corruption and political influence."⁴⁹

5 Economic land concessions: figures and impacts

Accurate information on ELCs is not available and different actors operate with varying numbers, which sometimes may be due to different methodologies in

⁴⁴ Constitution of the Kingdom of Cambodia, Art. 109, 111.

⁴⁵ NGO Forum on Cambodia, *Statistical Analyses of Land Disputes in Cambodia* (2011), p. 28 (not yet published).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, p. 28.

⁴⁸ See CCHR Briefing paper, February 2013, at: http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=29&id=5.

⁴⁹ US Department of State, *Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices* (2012), Executive Summary.

documenting ELCs. According to the latest information from the Minister of Agriculture, Forestry and Fisheries, from 1996 until now the government – namely MAFF and MOE – has granted a total area of 1.5 million ha of ELCs to 117 companies.⁵⁰

The Cambodian Human Rights and Development Association (ADHOC)⁵¹ documented that by December 2012 the RGC had granted or reserved at least 2,657,470 ha of land to investors for ELC purposes, of which 381,121 ha were recorded in 2012 alone. ADHOC also reported that out of these 381,121, at least 272,597 ha were granted or reclassified in protected areas.⁵² Furthermore, large parts of 28 Cambodian islands were reclassified as state private land between 2008 and 2010 and granted to concessionaires to build tourism resorts and casinos.

According to the latest data from another human rights organization, LICADHO, ELCs covered 2,289,490 ha by April 2013, which is equivalent to 63.46% of Cambodia's arable land.⁵³ In addition, 2,027,979 ha of mining concessions have been recorded. Thus, according to LICADHO, mining and economic land concessions together cover 4,317,469 ha or 24.46% of Cambodia's surface area. Figure 2 depicts the land size occupied by ELCs and other concessions, showing to what massive extent concessions have been granted. Due to the extended lease times, which range from 70 to 99 years, this land will not be available for rural communities for farming and cultivation to support their food security in the foreseeable future.

The NGO Forum on Cambodia⁵⁴ estimates that 25.7% or 73 cases of ongoing recorded 284 land disputes in 2011 were attributable to ELCs and that 62.2% of all disputes have occurred over agricultural land. Land disputes attributed to ELCs were more prevalent in the eastern parts of the country and in areas where rubber is commonly grown.⁵⁵ Contrary to the officially stated goals of reducing poverty, the granting of ELCs “are found to be a source of widespread,

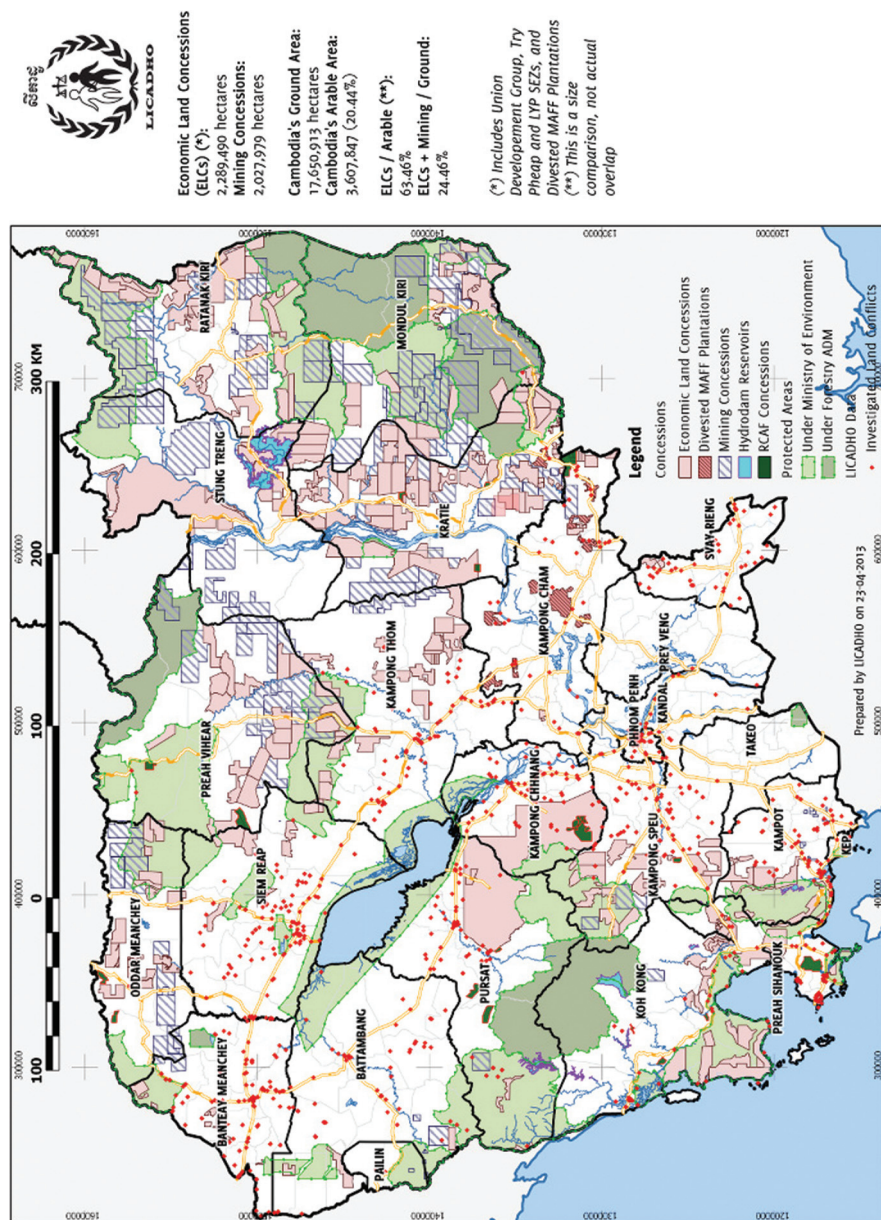
50 <[51 ADHOC, *A Turning Point? Land, Housing and Natural Resources – Rights in Cambodia in 2012* \(February 2013\), pp. 1, 10.](http://www.cen.com.kh/localnews/show_detail/19?token=YjMxZTQ4ZT>”; according to the statement, among the 117 ELC companies are 39 Cambodian companies occupying 593,000 ha. Vietnamese, Chinese, South Korean, Thai, American, Indian, and Malaysian companies are the predominant foreign investors.</p>
</div>
<div data-bbox=)

52 *Ibid.*, “...including Kirirom National Park, Lumphat Wildlife sanctuary, Kulen Prom Tep Wildlife Sanctuary and Phnom Prech Wildlife Sanctuary.

53 *Ibid.*, p. 10.

54 NGO Forum on Cambodia, *Statistical Analyses of Land Disputes in Cambodia* (2011), p. 18, 23 (not yet published).

55 *Ibid.*, p. 23. In the provinces of Kratie, Rattanakiri, Mondulakiri, and Kampong Cham more than five disputes were recorded. Kampong Speu and Kampong Thom provinces also recorded large numbers of disputes due to conflict between local people and ELCs.



systematic human rights violations such as forced evictions and deprivation from right to adequate housing, access to land and right to food, and contributing to environmental destruction.”⁵⁶

The Special Rapporteur's report validates the large number of previous reports that described the ELCs' negative impacts. For a detailed description of the impacts we therefore refer to the Special Rapporteur report and others with additional references. While ELCs have been a root cause of forced evictions in the past, 2012 marked a distressing climax when a 14-year-old girl was shot dead when security forces stormed a village in Kampong Domrey commune, Kratie province, which has been involved in a land dispute with a concessionaire.

With the equivalent of 63.46% of agricultural land not available for local farmers, the food security for the upcoming generations of Cambodians is put at risk.⁵⁷ The dispossession of local farmers contributes to an increase of the rural poor and a social transformation of former land possessors to landless and land-poor people that depend on selling their labor force. The situation has been described by international blogs and media with headlines, such as “The great Cambodian giveaway” and “Conflicts over land have taken a dangerous turn”.⁵⁸ Besides the environmental impacts such as the pollution of water resources,⁵⁹ soil erosion,⁶⁰ and degrading pristine forest areas to agricultural land, illegal logging outside the granted concession area has also been attributed to ELCs. In Ratanakiri's Lumphat Wildlife Sanctuary, the illegal logging of ~16,000 trees which could sell for 100 Mio USD was discovered recently.⁶¹ The illegal logs had been transported by trucks into the concession area.⁶² As logging in concession areas is legal, the logs were to be declared as originating from the concession area and then legally exported and sold, which is a well-known and common practice.

As a result of the rampant allocation of ELCs, 20–30% of Cambodia's land resources have been progressively concentrated into the hands of only 1% of the

⁵⁶ Subedi (2012), *supra* note 37, pp. 46–53.

⁵⁷ MSD estimates an annual growth rate of 1.54% and expects the population to double within less than 30 years, see <<http://www.msd.com.kh/cambodia/>>.

⁵⁸ Naly Pilorge, *Anti-Corruption Views – The Great Cambodian Giveaway* (21 September 2012), available at <<http://www.trust.org/trustlaw/blogs/anti-corruption-views/the-great-cambodian-giveaway>>; Naly Pilorge, “Conflict over Land in Cambodia Is Taking a Dangerous Turn”, *The Guardian*, 25 September 2012.

⁵⁹ Lee (2012), *supra* note 39, p. 37.

⁶⁰ Ülkenberg (2009), *supra* note 8, GTZ merged with DED and Inwent in 2011 and is now called Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

⁶¹ The Phnom Penh Post, 26 April 2013, pp. 1–2.

⁶² *Ibid.*

population, mostly at the expense of the weakest and most marginalized groups in rural areas.⁶³ The United Nations Development Program (UNDP) argues that “the sudden liberalization of land markets from 1989 onward, without first putting in place adequate institutional safeguards, laws and effective governance, left these weaker and less-informed members of society highly vulnerable to unregulated market forces and information asymmetries – to the advantage of the better informed, influential and powerful”.⁶⁴ From an economic perspective, granting large tracts of land for a small rental fee to major enterprises does not yield as much benefits for the public budget as they could be generated with alternative land use strategies. As illustrated above, rental fees among farmers lie between 200 and 250 USD/ha, compared to 2–10 USD/ha the state might receive from granting ELCs. This exemplifies that rental fees for concessionaires are decoupled from the value of the land and illustrates a structural preferential treatment of investors. One could argue that prices for land have to remain low to attract investment; however, state revenue could be much higher if this land would be leased to local farmers. This would allow a higher productivity of the land and it would provide more employment opportunities, aside from the fact that the commodities produced could be benefitting the national market, thus contributing to local food security. Thus, small-scale agriculture is critical in tackling hunger and poverty reduction, and research shows that the returns to investment in agriculture are higher than in most other sectors: agriculture stimulates at least 2.5 times more growth for the poorest third of the population than investment in other sectors.⁶⁵

6 The ambiguous role of international donors

Since 1992, various multilateral and bilateral donors have supported Cambodia, which continues to have a high dependence on donor aid, with almost half of its total annual budget being sourced from international donors. From 1992 to 2009, aid disbursements totaled 9.79 billion USD.⁶⁶ The European Union was the largest donor with a share of 23.2%.⁶⁷ From 2001 to 2009, the trend of disbursement of aid was upward from ~420 Mio USD to 900 Mio USD in 2009, mostly in

⁶³ UNCDF (2010), *supra* note 7.

⁶⁴ UNDP, *Expanding Choices for Rural People* (2007), p. 11.

⁶⁵ World Bank, *Agriculture for Development: World Bank Report 2008* (2008).

⁶⁶ Aid Effectiveness Project in the Development Issues Programme, NGO Forum on Cambodia, Fact Sheet on Terms of Assistance of Foreign Concessional Loans to Cambodia (2010), p. 1.

⁶⁷ *Ibid.*

the form of grants (71% compared to only 29% in loans). Recently, China has emerged as the most important donor country.

A major donor-funded program was the Land Management and Administration Project which supported systematic land registration in 15 of Cambodia's 24 provinces. As of September 2011, the systematic land registration program, administered by the Ministry of Land Management, Urban Planning and Construction (MLMUPC) and supported by a consortium of international aid agencies, delivered land titles for a total of 1,740,839 plots of land.⁶⁸ Hailed as a great success by the RGC and international donors, human rights advocates, and civil society groups argue that this program has only concentrated on the least conflict-prone areas of the country. According to official statements, efforts are now underway which aim at accelerating systematic land registration and avoiding the exclusion of areas from the process.

In view of the increasing number of land disputes, tenure insecurity and human rights violations, the donors' involvement in the land reform policies of the RGC has become increasingly ambiguous. Even some development partners concede that land distribution by the establishment of social land concessions for the rural landless and land-poor has mostly been a failure.⁶⁹ Donor countries have been confronted by their own parliaments and civil society groups with the question why they continue to provide technical or financial support to the contentious land registration program in Cambodia.⁷⁰ However, this did not lead to a substantial change in the donors' commitment to date. Neef et al. (2013: 17) argue that "international aid agencies involved in the land reform sector have unwillingly become accomplices of government elites that have proven increasingly unaccountable to the rural poor."⁷¹

The World Bank's ambivalent stance on foreign direct investment in agricultural land has become apparent in a number of recent statements. On the one hand, World Bank officials concede that "[u]sable land is in short supply, and there are too many instances of speculators and unscrupulous investors exploiting smallholder farmers, herders, and others who lack the power to stand up for their

68 Ministry of Land Management, Urban Planning and Construction (MLMUPC) Land is Life. Newsletter, November 2011, Issue 2. Phnom Penh (2011), p. 7.

69 Franz Volker Müller and Günther Zülsdorf, *Old Policies – New Action: A Surprising Political Initiative to Recognize Human Rights in the Cambodian Land Reform*, paper prepared for presentation at the "Annual World Bank Conference on Land and Poverty", The World Bank – Washington, DC (8–11 April 2013), pp. 6–7.

70 Financial support was provided by the World Bank, while Germany and Finland provided technical support.

71 Neef et al. (2013), *supra* note 38, p. 17.

rights. This is particularly true in countries with weak land governance systems.”⁷² Yet, at the same time, the Bank “called for substantial new investment in agriculture – in smallholders and large farms – from both the public and private sectors”⁷³ to feed a growing global population. The statement suggests that the World Bank – while also emphasizing support for smallholders – is not about to change its policy to support large-scale land acquisitions. The World Bank’s continued endorsement of additional large-scale investments does not include credible remedies for deficient and weak land governance regimes in the countries targeted by investors. Hence, violation of laws and human rights are likely to continue in connection with large-scale land investments.

7 A turning point⁷⁴? Cambodia’s moratorium on concessions and the new titling scheme

In May 2012, the RGC declared a moratorium on the granting of ELCs and announced a review of existing ELCs,⁷⁵ combined with a new titling scheme,⁷⁶ which is currently being implemented and aims to grant land titles to 470,000 households on 1.8 million ha, living in ELC and forest concession areas as well as on state public land.⁷⁷ By 4 May 2013, 226,525 land titles were distributed to beneficiaries. The new titling scheme is carried out by close to 2,000 official staff⁷⁸ and a similar number of student volunteers in 20 provinces of Cambodia.⁷⁹ Neither civil society groups nor development partners have been allowed to monitor the implementation. The moratorium and the new titling scheme were welcomed by civil society as a much needed initiative to

⁷² World Bank, *Access to Land Is Critical for the Poor*, Published: 11 April 2013, Abimbola Akosile (2013b), available at <<http://farmlandgrab.org/post/view/21922>>.

⁷³ *Ibid.*

⁷⁴ As coined by ADHOC.

⁷⁵ *Directive 01 on Measure to Strengthen and Foster Effectiveness of ELC Management*, dated 07 May 2012 (Khmer version) (2012a), available at <<http://mlmupc.gov.kh/?page=detail&menu1=118&ctype=article&id=118&lg=kh>>.

⁷⁶ As announced by the Cambodian Prime Minister on 14 June 2012 “New Actions on Existing Policies”.

⁷⁷ Speech of H.E. Im Chhun Lim, Senior Minister and Minister of Land Management, Urban Planning and Construction and Chairman of the Council for Land Policy, Phnom Penh, 26 September 2012 (unofficial translation).

⁷⁸ Most of them have worked on the systematic land registration process before Directive 01. Consequently, the process of systematic land registration has slowed down.

⁷⁹ Not included are Phnom Penh, Kandal, Prey Veng, and Pailin.

strengthen tenure security.⁸⁰ At the same time, civil society discussed concerns over the deployment of the volunteers, in large part because of a lack of transparency surrounding the process and the volunteers wearing military uniforms and being transported on military trucks. Local reports indicated that villagers felt intimidated by the appearance of the volunteers.⁸¹ Civil society groups discussed potential impacts on land tenure of private landholders, land use, and conservation, the rule of law and implementation of the existing legal framework governing land management and use and community cohesion and stability.⁸²

The legal background of this new titling scheme or “new action based on old policies” as it is described by the government rests in the issuance of the Directive 01, a “Directive on Measures to Strengthen and Foster Effectiveness of ELC management”.⁸³

1. *To temporarily postpone granting economic land concessions;*
2. *Ministries, institutions and authorities with relevant competence shall execute the decision of the Royal Government on granting ELCs and pay attention to implement contracts on ELCs, particularly to implement the tiger-skin formula policy (explained in more detail below) and not to affect communal land and livelihood of citizens, aiming to insure these ELCs produce tangible benefits for the nation and its citizens sustainably.*
3. *For companies already possessing government permits but failing to comply with applicable procedures and contracts, by logging without developing the ELC, encroaching on extra land, leaving the land vacant for resale, proceeding with transactions contrary to terms of contract, encroaching on lands of citizens or communities, the Royal Government will withdraw those ELCs. Those withdrawn lands will be placed under direct control of the state.*
4. *Regarding ELCs which received permits in principle from the Royal Government prior to the issuance of this regulation shall proceed to comply with applicable laws and procedure.*

Directive 01 calls for increased monitoring of ELCs and reinforced the concept of the “tiger (or leopard)-skin policy”, which basically means that land inhabited by farmers must be cut out of the concession areas – leaving the cultivated areas resembling the pattern of a leopard skin. This concept was already a component

80 NGO Position Papers on Cambodia’s Development in 2010–2012. Monitoring the Implementation of the National Strategic Development Plan and the 2010 CDCF Joint Monitoring Indicators, September 2012, the NGO Forum on Cambodia, pp. 72, 85; ADHOC, p. 34.

81 NGO Meeting, Phnom Penh, 29 June 2012.

82 NGO Meeting, Phnom Penh, 29 June 2012. Development Partners were informed about these concerns through the Technical Working Group. The Technical Working Group on Land is a body comprised Development Partners, Civil Society, and Government Representatives to coordinate their work on land issues.

83 Unofficial translation.

of the lease agreements. Point 4 of the Directive allows the continuation of granting ELCs which have been permitted by the Government prior to the issuing of the moratorium dated 7 May 2012, but no information is available regarding how many ELCs had received approval. According to RGC, ELCs that have been approved after Directive 01 are those that were already approved in principle and were just waiting for final approval.

While the human rights group ADHOC counted 33 ELCs which have been approved since the moratorium,⁸⁴ the royal gazette reports that only 15 new ELCs have been granted. According to official records, no ELCs have been granted since December 2012 which has been interpreted by some observers that the moratorium has been effective in stopping new concessions after December.⁸⁵ While no information is available on how many ELCs have been cancelled, 105 sub-decrees were issued until the end of January 2013, excising land from ELCs, logging concessions, forest covered areas, and protected and other areas. The excised land was mostly reclassified as state private land and subsequently awarded to villagers who occupied, used, and cultivated the land.⁸⁶

According to the government, the campaign “seeks to resolve and legalize unclear land occupation through the donation of ownership rights, the granting of small-scale ELCs or social land concessions in order to ensure tenure security; to resolve land conflicts [...]”.⁸⁷ Land areas, which are not identified and demarcated as private plots are considered to be state land.⁸⁸ Thus, demarcating private plots by the initiative helps to identify state private and state public land and contributes to mapping out state public land. It further aims at creating a state land inventory to identify land for future social land concessions.⁸⁹

The new titling scheme is based on with the assumption that the titles are being issued in areas where people do not have possession rights, i.e. are considered illegal occupants by existing law. An analysis of whether the title recipients were indeed “illegal” prior to the implementation of Directive 01 has yet to be made. The directive does not mention a certain size limitation of private plots. In fact, the volunteers are ordered to only demarcate up to 5 ha of land for private titles per farm household. Indeed the limitation was announced in the Senior Ministers speech⁹⁰ and was mentioned in an RGC instruction from 1989

⁸⁴ ADHOC, p. 34.

⁸⁵ E.g. Müller and Zülsdorf (2013), *supra* note 68, p. 6.

⁸⁶ According to the Royal Gazette.

⁸⁷ Speech of H.E. Im Chhun Lim, *supra* note 76.

⁸⁸ MLMUPC, August 2012.

⁸⁹ *Ibid.*

⁹⁰ Speech of H.E. Im Chhun Lim, *supra* note 76. Please see footnote 64.

on the implementation of Land Use and Management Policy as the legal basis for granting possession rights on land for agricultural production.⁹¹ Farmers who own bigger land plots can receive a “small-scale ELC” up to a maximum of 200 ha for their remaining land.

There has been confusion whether Directive 01 is actually implemented in disputed areas. According to official statements by MLMUPC senior staff this is not the case, because disputes have to be solved first through existing mechanisms.⁹² Yet the wording of the statement somehow can be interpreted in the sense that Directive 01 provides the basis for land titling for villagers involved in a dispute with concessionaires. Reports from the field indicate that in certain cases disputed land has been demarcated, while not in other cases.⁹³ This lends credence to the interpretation that the RGC views Directive 01 more as a mechanism to prevent future land disputes, rather than solving ongoing ones.

The statement emphasized that with regard to indigenous peoples (IP), “their rights are respected” and that the initiative will also demarcate and register communal land for those IP communities in the process of communal land titling. Students were instructed to be careful about IP Land.⁹⁴ Under the 2001 Land Law, IP communities can receive communal land titles (CLT). The process is threefold and requires IP communities first to recognize the identity of IPs as a collective group with the recognition granted by the Ministry of Rural Development; second, they need to register as legal entities with the Ministry of Interior (MoI); and third, they are required to measure and demarcate the land with MLMUPC. CLTs include IPs’ residential, agricultural, shifting agricultural, and spirit and burial forest land. As a consequence of accepting private titles limited to 5 ha, IPs will lose access to many of their traditional lands and leave them open to commercial exploitation as they effectively give up their rights to these areas. However, the process of CLT has proven complicated and lengthy⁹⁵

91 Instruction (Sechkdey Nainom) on Implementation of Land Use and Management Policy, Council of Minister, No. 03 SNN, 3 June 1989.

92 MLMUPC *supra* note 87.

93 Land was not demarcated for villagers involved in a land dispute in Koh Kong with the Union Development Group, and, also in Koh Kong, with the Koh Kong Plantation Company. Villagers in a dispute with NGO Wild Aid – also in Koh Kong – had their land demarcated; see ADHOC (2013), *supra* note 50, p. 35.

94 MLMUPC *supra* note 87.

95 See also NGO Position Papers on Cambodia’s Development in 2010–2012. Monitoring the Implementation of the National Strategic Development Plan and the 2010 CDCF Joint Monitoring Indicators, September 2012, the NGO Forum on Cambodia, pp. 77, 78, 82, 83 for more details.

and up to now, only eight IP communities have received a CLT, two in Ratanakiri and six in Monduliri.⁹⁶

Directive 01 was complemented subsequently by other directives and instructions which added detail to the original provisions. Instruction 15⁹⁷ on the implementation of the Directive 01 outlined the Directive's application on indigenous peoples' land. It reaffirmed that only the regulations for collective land registration⁹⁸ shall be followed by the student volunteers for those IP communities that are already registered as a legal entity with the MoI or those communities whose request is pending with the MoI. In other words, Instruction 15 ordered the volunteers not to issue private titles to those members of IP communities, who successfully achieved the second step of CLT or are in the process of doing so. It does not mention the case of IP communities that have not yet entered the CLT process.

The implementation of Directive 01 has progressed with great speed, and human resources allocated for it are greater than those for the regular systematic land registration process. Hence, it would appear that Directive 01 had the potential to speed up the communal land titling process, as volunteers deployed in areas inhabited by IPs would have been able to rapidly demarcate communal land. However, with reference to IP communities who have not yet been registered as a legal entity by MoI yet, the instruction stated also that "individual indigenous people who do not join as member of the community and wish to live privately" can apply for private land titles provided by Directive 01. Instruction 20⁹⁹ thus overruled Instruction 15 and postponed communal land titling to a later stage due to the lengthy process of boundary demarcation and for budget reasons.

Field research carried out in Ratanakiri by a consortium of NGOs revealed that the Directive holds negative impacts to indigenous peoples. Villagers reported of being pressured to accept private titles and of being forced to decide

⁹⁶ MLMUPC, May 2013.

⁹⁷ Instruction No. 15 on the implementation of the Royal Government's Directive No. 01 BorBor, dated 07 May 2012 on the strengthening and increasing the effective management of Economic land concession in areas of indigenous communities; evergreen forest, semi-evergreen forest, dense forest; and in areas of national defense bases and historical and cultural heritage sites, Supreme Council of State Reform, Council for Land Policy, Phnom Penh, 04 July 2012 (unofficial UNOCHCR translation).

⁹⁸ Sub-decree 83.

⁹⁹ Instruction No. 020 on the implementation of the Royal Government's Directive No. 01 BB, dated 07 May 2012 on the strengthening and increasing the effective management of Economic land concession in areas of indigenous communities. Supreme Council of State Reform, Council of Land Policy, Phnom Penh, 26 July 2012 (unofficial UNOCHCR translation).

whether to accept them without adequate time for consideration, thus creating division within communities.¹⁰⁰ For those communities who were already in the process of receiving CLT, the process was halted. Villagers were reportedly told that if they do not accept private titles they will receive nothing at all, and authorities declared that in such case any disputes would not be resolved for villagers.¹⁰¹ As communal land was not demarcated, in several cases concession companies cleared communities' common land after private plots had been titled, causing additional land loss.¹⁰² Similar impacts were reported from Mondulkiri. There, indigenous community members also accepted private titles after the student volunteers told them that the communal land titling process had been stopped. Some were told that accepting private titles would not hamper their future claim to CLTs. Additional irregularities were reported from Bousra commune in Mondulkiri. People outside of the commune came and asked to have land registered in their name. They paid the volunteer teams money to receive a land title, and community members felt that the requests of outsiders were prioritized. The community members felt that if they wanted their land to be measured they also needed to pay. Therefore, some community members paid the volunteers teams each around 50 USD or invited them for drinks and/or food. Community members who did not have the means to do so felt that they had no chance to have their land measured. IP community members who received private titles later tried to nullify them¹⁰³ and others want to convert private titles into collective ones.

It could be argued that these negative impacts on indigenous peoples' efforts to receive CLTs are occasional events, unintentional and due to "mis-understandings" on behalf of the IP as well as the student volunteers on the concept of communal land titling and private titles. However, a spokesperson of the MLMUPC was quoted by local media saying: "We have to push all the minority people to register for private land titles to protect their land and stop the disputes with economic land concessions".¹⁰⁴ Communal land not covered by private titles would be granted to the companies, a practice that the spokesperson defended with the following view: "I do not think this is unfair for the ethnic minorities because they could have lost all their land if the

100 Alison Rabe, *Directive OIBB in Ratanakiri Province, Cambodia: Issues and Impacts of Private Land Titling in Indigenous Communities* (2013), p. 18.

101 *Ibid.*

102 *Ibid.*, p. 7.

103 Leemann, Esther: Short Report on Committee Members of the 7 Indigenous Communities of Busra Commune (Pu Tuet, Pu Reang, Bu Sra, Pu Til, Lammeh, Pu Char, Pu Lu) trying to Nullify Private Land Titles. 2013,

104 The Cambodian Daily, 24 April 2013, p. 18.

government does not help to cut land from the companies' concession with the private titles".¹⁰⁵

This statement is noteworthy in various ways. First, it refutes the assertion that the negative impacts are unintentional. On the contrary, it illustrates that these impacts and the undermining of communal land titling efforts are intentional and volitional consequences. Second, it reveals a problematic perspective of parts of the authorities on the Cambodian legal framework and customary land rights. The Cambodian Land Law 2001, Art. 23 II stipulates interim protection for indigenous groups prior to their land being collectively titled: "groups existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law."¹⁰⁶ It is important to note that interim protection by the Land Law is granted to indigenous groups irrespective of whether they have entered the CLT process and achieved legal entity registration or not. Furthermore, Art. 28 Land Law states specifically that no rights to land belonging to an indigenous community can be transferred to anyone outside of the group. The duty to enforce these provisions rests with the state, its authorities and the courts. Any actions of the state which would make the indigenous peoples' management of their immovable property impossible represent a breach of law by the state. Hence, issuing private titles to IP community members not yet participating in the CLT process stands in contrast to the state's duty as stipulated in Art. 23 II Land Law as well as the UN Declaration on the Rights of Indigenous Peoples. For the communities described above, Directive 01 undermines their rights and efforts to receive CLTs. This holds further effects on the work and contributions from development partners as well as NGOs that financially and technically supported the CLT process. If the situation is not being rectified and the distribution of private titles continues on land inhabited by indigenous peoples then it is likely that no land is being left to be communally titled. NGOs and development partners input is substantially undermined as it is to be expected that the number of communities which can formally receive CLTs will be reduced after Directive 01 comes to an end. The support already given to communities, who cannot proceed further now as the CLT process has halted, is diminished if the communities cannot receive communal titles. According to Rabe (2013), in Ratanakiri out of 79 villages in different stages of the CLT process, 26 villages with a total of 3,053 families were affected by Directive 01.¹⁰⁷ Fifty-two percent or 1,586 families had their land titled for private titles.

¹⁰⁵ *Ibid.*

¹⁰⁶ Land Law 2001, Art. 23 II.

¹⁰⁷ Out of these, 12 communities were in stage 1 of the CLT process, 2 communities in stage 2, and 9 communities in stage 3. 5 communities had not started the CLT process yet.

At this point, it is difficult to assess whether this statement reflects the position of the MLMUPC generally. Subsequent information from MLMUPC indicates that this might not be the case. In a meeting with NGOs a representative from MLMUPC emphasizes that Directive 01 will be implemented in the spirit of Instruction 15 and not issue private titles to members of IP communities who are registered as legal entities with the MoI or those in the process of registering. The role of the volunteers is to record the demarcation done by the community members. In April 2013, a telephone hotline was established for community members to report on cases of illegal logging and shortcomings of Directive 01 implementation. It was further indicated that the head of the Cambodian government called for an acceleration of CLT. In Mondulkiri, 580 individual plots were withdrawn from the 30-day public display period over concerns that they belong to members of IP communities. Officials from the MLMUPC confirmed that private titles could subsequently be converted to communal titles, but that a legal procedure has yet to be developed.¹⁰⁸ Countering this official narrative, Vize and Hornung (2013: 9, 21) argue that the Directive 01 “has great potential as a tool to further weaken and divide already disenfranchised indigenous communities” and “is being used in some communities as a tool to trick indigenous communities out of their rights to collective titles”.¹⁰⁹

The question arises how IP communities that have not been registered with MoI can maintain their right to receive CLTs. To improve their situation, efforts in supporting the communities claim to be registered as legal entities would need to be expedited and strengthened. Given the implementation speed of Directive 01, there is an imminent risk that the claims to communal titles may fall by the wayside. As spiritual, burial grounds and areas for shifting agriculture are not included in the private land titling scheme, those areas might be lost to concessionaires if a conversion would be made possible only in the distant future.

For communities that are involved in a dispute with concessionaires and did not have their private plots measured, their tenure security is not strengthened by Directive 01. Instead, Directive 01 perpetuates and aggravates land disputes. Donors need to carefully assess what consequences are to be drawn if the actions by the Government intentionally compromise the CLT process supported by them. Even though the overwhelming majority of IP communities want to

108 MLMUPC, May 2013.

109 Jeff Vize and Manfred Hornung, *Indigenous Peoples and Land Titling in Cambodia: A Study of Six Villages*, paper prepared for presentation at the “Annual World Bank Conference on Land and Poverty”, Washington, DC (2013).

have their lands communally titled,¹¹⁰ it remains to be seen how much communal land will still be available after Directive 01 comes to an end. Following the logic of MLMUPC, IP Land which is not individually titled will be occupied by companies and will not be available for CLT.

Müller and Zülsdorf (2013) view the distribution of land by Directive 01 as a tremendous step toward the realization of human rights for poor and vulnerable people.¹¹¹ While access to land secured by a land title might implicate that beneficiaries can exercise their human right to adequate housing and food production at the subsistence level, other aspects of this right need to be equally addressed to realize human rights. For instance, the core elements of the right to adequate housing comprise besides the legal security of tenure: availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. Those are not being addressed by handing out land where communities in many cases already reside.

Against the backdrop of the described impact of Directive 01 on IPs, a careful differentiation needs to be made between those that benefit in terms of improved tenure security and those that do not. In line with the information received from MLMUPC on 2 May 2013, Müller and Zülsdorf (2013) maintained that

MLMUPC is working on getting the campaigners back to the originally-announced procedure that demands the exclusion of those IP communities that have reached various steps towards collective land ownership in line with Land Law of 2001 and other policies and regulations in effect. Still there is no solution for those IP communities that are not under this process yet.

Future developments will show whether the government is indeed willing to put in place effective measures to ensure the full respect of IP communities wishing to receive CLTs. Given the persistent contradictions between official rhetoric and local implementation practice, it is unlikely that this will happen any time soon.

The implementation of Directive 01 was discontinued prior to the national parliamentary elections in July 2013. According to an official statement, close to 700.000 parcels had been surveyed by that date; more than 660.000 parcels had been publicly displayed, but less than 380.000 land titles were ultimately delivered by 30 June 2013.¹¹² As a consequence, ~280,000 titles had not yet been distributed to the people. Although the Cambodian Prime Minister

110 Rabe (2013), *supra* note 99, p. 21, for the study area.

111 Müller and Zülsdorf (2013), *supra* note 68.

112 MLMUPC, Notification dated 30 June 2013, available at <<http://mlmupc.gov.kh/?page=&lg=en>>.

announced that the new titling scheme would continue after the elections on 28th July, if the ruling party stayed in power,¹¹³ it remains to be seen whether the campaign continues and if and how the outstanding titles will be delivered. Current official announcements to restructure the systematic land registration teams¹¹⁴ indicate that instead of Directive 01, land registration via the systematic land registration process might be prioritized.

8 Conclusion and policy implications

There is overwhelming evidence that the system of granting ELCs has been exploited by a few, well-connected elite groups to the disadvantage of the poor and vulnerable parts of the population, the environment as well as the public budget. State institutions have been unable to restrain this process due to weak governance and collusive behavior of parts of the state authorities and the private sector. In this regard, Cambodia has become a captured state. To overcome these challenges, a rigid political would be necessary to re-establish the rule of law and the respect for basic human rights and to enforce existing regulatory frameworks without exemption.

Directive 01 is an attempt to formalize the common and long-term occupation of state land. The initiative targeted to legalize the occupation of land with “unclear status”. It does not comprehensively attempt to resolve conflicts involving concessionaires and fails to address the root causes for these conflicts. Thus, it does not overhaul a system that has been responsible for overlapping claims to and use of land and other natural resources. Instead, there is reason to fear that it risks perpetuating and aggravating resource conflicts, distributional inequities and tenure insecurity affecting the majority of the rural poor.

Finally, the principles for responsible agricultural investment or the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security as promoted by a number of international actors, including the World Bank, FAO, and several donor countries, appear not to be the right instrument to stop the continued concentration of Cambodia’s natural resource in the hands of foreign investors and local elites. If investors and large parts of the state apparatus do not follow mandatory international and domestic law, why should they adhere to a set of voluntary principles?

113 The Cambodia Daily, Saturday–Sunday, 25 May 2013, Volume 55, Issue 9.

114 MLMUPC, official announcement dated 17 August 2013.

References

- ADHOC, A Turning Point? Land, Housing and Natural Resources – Rights in Cambodia in 2012, 2013.
- CCHR, *CCHR Briefing Note February 2013, Judicial Reform. Cambodian Centre for Human Rights (CCHR)* (2013), Available at: <http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=29&id=5>
- DANIDA (Danish International Development Agency) and SCW (Save Cambodia's Wildlife), "The Atlas of Cambodia: National Poverty and Environment Maps", CD-Rom, 2007.
- East-West Management Institute, Inc. (EWMI), "Land Law of Cambodia, A Basic Law Guide for Students and Practitioners", Final draft, 23 October 2003.
- Global Witness, *Rubber Barons. How Vietnamese Companies and International Financiers are Driving a Land Grabbing Crisis in Cambodia and Laos* (London: Global Witness Limited (Global Witness), 2013).
- Kavenagh, Mark, Dom Renfrey and Erin Flynn, "Free, Prior and Informed Consent in the Development Process in Indigenous People Communities of Mondulkiri and Ratanakiri Province", NGO Forum on Cambodia, 2012.
- Lee, Ji-Sook, "Moving Beyond Misconceptions", MH-Ethanol – Case Study of a Korean Agro-Industrial Investment in Cambodia, 2012.
- Leemann, Esther, "Short Report on Committee Members of the 7 Indigenous Communities of Busra Commune (Pu Tuet, Pu Reang, Bu Sra, Pu Til, Lammeh, Pu Char, Pu Lu) Trying to Nullify Private Land Titles", unpublished, 2013.
- Loehr, Dirk, "Land Reforms and the Tragedy of the Anticommons – A Case Study from Cambodia", 2012.
- MLMUPC, "Land is Life", Newsletter, November 2011, Issue 2. Phnom Penh, Ministry of Land Management, Urban Planning and Construction (MLMUPC), 2012.
- Müller, Franz Volker and Günther Zülsdorf, *Old Policies – New Action: A Surprising Political Initiative to Recognize Human Rights in the Cambodian Land Reform*, paper prepared for presentation at the "Annual World Bank Conference on Land and Poverty", The World Bank – Washington, DC (8–11 April 2013).
- McKenney, Bruce, Yim Chea, Prom Tola, and Tom Evans, *Focusing on Cambodia's High Value Forests: Livelihoods and Management*, Cambodia Development Resource Institute and Wildlife Conservation Society, Phnom Penh, 2004.
- Neef, Andreas, Siphath Touch and Jamaree Chienthong, *The Politics and Ethics of Land Concessions in Rural Cambodia*, *Journal of Agricultural and Environmental Ethics* [2013] (Online First – DOI 10.1007/s10806-013-9446-y).
- NGOF, *Statistical analysis on land disputes in Cambodia, 2011* (Phnom Penh: The NGO Forum on Cambodia (NGOF), in press).
- NGOF, *Fact Sheet on Terms of Assistance of Foreign Concessional Loans to Cambodia*, Aid Effectiveness Project in the Development Issues Programme, NGO Forum on Cambodia (NGOF) (2010). Can be downloaded at <<http://www.ngoforum.org.kh>>.
- NGOF, *Statistical analysis on land disputes in Cambodia, 2010* (Phnom Penh: The NGO Forum on Cambodia (NGOF), 2011).
- NGOF, *NGO Position Papers on Cambodia's Development in 2010-2012*, Monitoring the Implementation of the National Strategic Development Plan and the 2010 CDCF Joint Monitoring Indicators, Phnom Penh: The NGO Forum on Cambodia (NGOF), 2012.

- Pilorge, Naly, *Anti-Corruption Views – The Great Cambodian Giveaway* (2012a), Available at <<http://www.trust.org/trustlaw/blogs/anti-corruption-views/the-great-cambodian-give-away>> (accessed 21 September 2012).
- Pilorge, Naly, “Conflict over Land in Cambodia Is Taking a Dangerous Turn”, *The Guardian*, 25 September 2012b.
- Pred, David, “Bittersweet. A Briefing Paper on Industrial Sugar Production, Trade and Human Rights in Cambodia” *Bridges across Borders Cambodia* (2010), Available at <<http://bab-cambodia.org/developmentwatch/cleansugarcampaign/bittersweet.pdf>>
- Rabe, Alison, *Directive 01BB in Ratanakiri Province: Cambodia, Issues and Impacts of Private Land Titling in Indigenous Communities* (2013).
- RGC, *Instruction (Sechkkey Nainom) on Implementation of Land Use and Management Policy*, Council of Minister, No. 03 SNN, 3 June 1989. Royal Government of Cambodia (RGC), 1989.
- RGC, *Land Law*, Royal Government of Cambodia (RGC), 2001.
- RGC, *Sub Decree on Economic Land Concessions*, Royal Government of Cambodia, No. 146 ANK/BK, 27 December 2005. Royal Government of Cambodia (RGC), 2005.
- RGC, *Sub-decree on Modification on the Sub-decree on Economic Land Concessions*, Royal Government of Cambodia, No. 131, 2008a.
- RGC, *Protected Area Law*, Royal Government of Cambodia (RGC), 2008b.
- RGC, *Declaration of the Royal Government on Land Policy*, No. 27, Royal Government of Cambodia (RGC), 2009.
- RGC, *National Strategic Development Plan Update 2009-2013*, Royal Government of Cambodia (RGC), 2010.
- RGC, *Directive 01 on Measure to Strengthen and Foster Effectiveness of ELC Management*, dated 7 May 2012 (Khmer version) (2012a), available at <<http://mlmupc.gov.kh/?page=detail&menu1=118&ctype=article&id=118&lg=kh>>
- RGC, *Instruction No 15 on the implementation of the Royal Government's Directive No. 01 BorBor*, dated 7 May 2012 on the strengthening and increasing the effective management of Economic land concession in areas of indigenous communities; evergreen forest, semi-evergreen forest, dense forest; and in areas of national defense bases and historical and cultural heritage sites, Supreme Council of State Reform, Council for Land Policy, Phnom Penh, 4 July 2012 (unofficial UNOCHCR translation), 2012b.
- RGC, *Instruction No. 020 on the implementation of the Royal Government's Directive No. 01 BB*, dated 07 May 2012 on the strengthening and increasing the effective management of Economic land concession in areas of indigenous communities. Supreme Council of State Reform, Council of Land Policy, Phnom Penh, 26 July 2012 (unofficial UNOCHCR translation), 2012c.
- RGC, *Royal Government of Cambodia*, Ministry of Planning, *Poverty in Cambodia – A New Approach*, Redefining the Poverty Line, Phnom Penh, April 2013a.
- RGC (2013b) *An Approach Paper for the National Strategic Development Plan 2014-2018, Draft*. Royal Government of Cambodia (RGC).
- Sothath, Ngo and Chan Sophal, *Cambodian Economic Association, in cooperation with NGO Forum on Cambodia*, Phnom Penh “Economic Land Concessions and Local Communities”, 2012.
- Sothath, Ngo and Chan Sophal, *Cambodian Economic Association in cooperation with the NGO Forum on Cambodia and ActionAid Cambodia “Agriculture Sector Financing and Services for Smallholder Farmers” Phnom Penh*, 2010.
- Sperfeldt, Christoph, Farrah Tek and Billy Chia-Lung Tai, *An Examination of Policies Promoting Large Scale Investments in Farmland in Cambodia*, Submitted to the Cambodian Human Rights Action Committee (CHRAC), November 2012.

- Subedi, Surja P., *A Human Rights Analysis of Economic and Other Land Concessions in Cambodia* (2012), Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, A/HRC/21/63/Add.1.
- Kimsung, Tong, *Analysing Chronic Poverty in Rural Cambodia: Evidence from Panel Data*, CDRI Working Paper Series No. 66, February 2012.
- Üllenberg, A., *Foreign Direct Investment (FDI) in Land in Cambodia, Gesellschaft für Technische Zusammenarbeit (GTZ)* [2009].
- UNDCF, *Local Development Outlook Cambodia, 2010*, United Nations Capital Development Fund (UNCDF), 2010.
- UNDP, *Raising Rural Incomes in Cambodia: Beyond Sectoral Policy, Towards a Framework for Growth*, Discussion Paper No 4. United Nations Development Programme (UNDP), 2007.
- US Department of State, *Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices, 2012* (2013), available at <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>>.
- Vize, Jeff, and Manfred Hornung, *Indigenous Peoples and Land Titling in Cambodia: A Study of Six Villages*, paper prepared for presentation at the “Annual World Bank Conference on Land and Poverty”, The World Bank – Washington, DC (8–11 April 2013).
- World Bank, *Agriculture for Development: World Bank Report 2008*, 2008.
- World Bank, *Poverty Profile and Trend in Cambodia: Findings from the 2007 Cambodia Socio Economic Survey (CSES) East Asia and Pacific Region*, 2009.
- World Bank, *World Bank Country Data, Cambodia* (2013a), Available at <www.worldbank.org/en/country/cambodia>.
- World Bank, *Access to Land Is Critical for the Poor*, Published 11 April 2013, Abimbola Akosile (2013b), available at <<http://farmlandgrab.org/post/view/21922>>.